TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 190.

[redacted] BUILDING AND LOAN ASSOCIATION OF SYRACUSE, NEW YORK, PLAINTIFF IN ERROR,

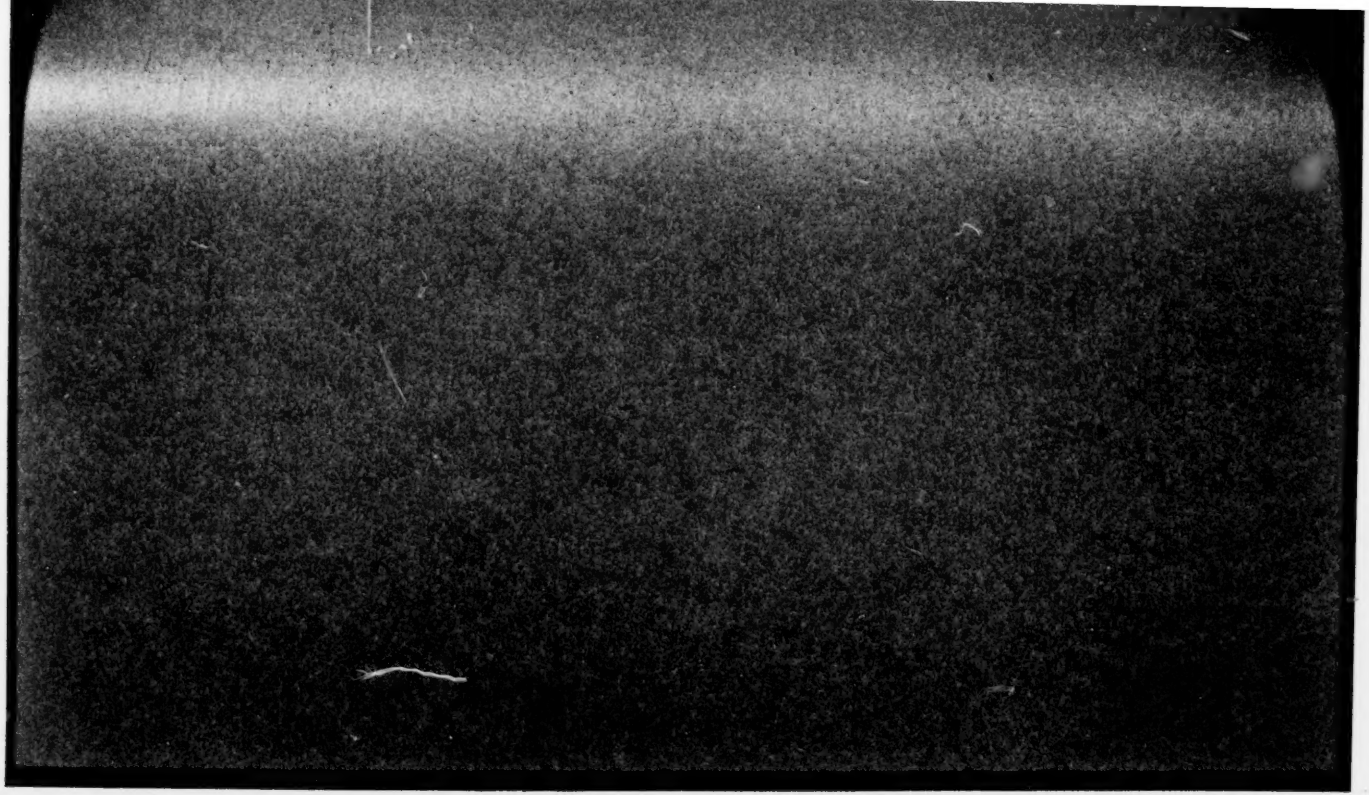
vs.

[redacted] AND MARION BONNOTTE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

FILED [redacted], 1920.

(17,000)



(17,620.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 190.

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, NEW YORK, PLAINTIFF IN ERROR,

vs.

LAWRENCE S. WELLING AND MARION BONNOITT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

INDEX.

	Original.	Print
Caption	*a*	1
Case on appeal	3	2
Complaint	3	2
Answer	7	4
Demurrer	11	6
Ruling on demurrer	12	6
Evidence for plaintiff	12	7
Exhibits introduced	12	7
Testimony of L. S. Welling	12	7
Exhibit A—Articles of incorporation of the Eastern Building and Loan Association	36	21
B—By-laws of the Eastern Building and Loan Association	50	28
C—Deed from Welling & Bonnoitt to the Eastern Building and Loan Association, May 1, 1891	66	36
C'—Copy of seventy-five notes	70	39

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 5, 1900.

	Original.	Print
Exhibit C²—Copy of last three maturing notes	71	39
D—Pamphlet of Eastern Building and Loan Association	71	39
E—Application for shares	84	46
F—Certificate of shares	86	47
G—Application for loan	90	49
H—Letter, Welling & Bonnoitt to Association, August 23, 1897	92	50
I—Letter, Bunn to Welling & Bonnoitt, August 28, 1897	92	50
J—Letter, Welling & Bonnoitt to Association, September 1, 1897	94	51
K—Letter, Bunn to Welling & Bonnoitt, September 8, 1897	95	51
L—Letter, Welling & Bonnoitt to Association, September 17, 1897	95	52
M—Letter, Bunn to Welling & Bonnoitt, September 22, 1897	96	52
N—Letter, Welling & Bonnoitt to Association, September 22, 1897	97	52
O—Letter, Bunn to Welling & Bonnoitt, September 25, 1897	97	53
P—Letter, Welling & Bonnoitt to Association, September 28, 1897	98	53
Q—Letter, Welling & Bonnoitt to Association, September 30, 1897	99	53
R—Letter, Bunn to Welling & Bonnoitt, November 24, 1897	99	54
Evidence for defense	101	54
Motion for nonsuit	101	54
Testimony of C. A. Pooler	101	55
D. A. Pierce	114	61
Exhibit S—Application for advance	120	65
T—Certified copy of laws of New York	123	66
Chapter 122	124	67
Chapter 564	132	71
U—Opinion in O'Malley *vs.* People's B., L. & S. Association	138	74
V—Opinion in Englehardt *vs.* Fifth Ward Dime Savings and Loan Association	145	78
W—Opinion in People *vs.* Lowe *et al.*	146	78
X—Opinion in Concordia Savings and Aid Association *vs.* Read *et al.*	159	85
Evidence for plaintiff in reply	164	87
Testimony of L. S. Welling (recalled)	164	87
Exhibit Y—Placard	166	89
Motion for verdict	168	90
Rulings by the court	170	91
Charge	173	92
Order that other cases abide decision herein	173	92
Exceptions	174	93
Notice of motion to affirm	178	95

	Original.	Print
Agreement as to case on appeal	182	97
Clerk's certificate	182	97
Opinion	183	97
Judgment	189	101
Petition for rehearing	190	101
Order denying petition for rehearing	203	108
Clerk's certificate	204	108
Citation	205	109
Proof of service of citation	206	109
Bond	207	110
Assignment of errors	215	113
Writ of error	219	115
Clerk's certificate	221	116

a

Certified Record.

Supreme Court of South Carolina, Clerk's Office, Columbia, S. C. Filed 9 May, 1899. U. R. Brooks, Clerk.

THE STATE OF SOUTH CAROLINA:

In the Supreme Court, April Term, 1899, Fourth Circuit, Darlington County.

LAWRENCE S. WELLING and MARION BONNOITT, Plaintiffs, Respondents,
against
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, NEW York, Defendant, Appellant, and Five Other Plaintiffs, Respondent-, against said Defendant, Appellant.

Case.

For plaintiffs, respondent-: W. F. Dargan, counsel for Welling & Bonnoitt and H. M. Wilcox: Woods & Macfarlan, attorneys for H. A. Edwards and K. M. Oakes *et al.*; J. J. Ward, attorney for Welling and Bonnoitt, C. E. Ward, and A. W. Welling; Chester M. Elliott, T. H. Spain, attorneys and counsel for defendant, appellant.

1 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, April Term, 1899, Fourth Circuit, Darlington County.

LAWRENCE S. WELLING and MARION BONNOITT, Plaintiffs, Respondents,
against
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, NEW York, Defendant, Appellant.

HENRY M. WILCOX, Plaintiff, Respondent,
against
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, NEW York, Defendant, Appellant.

KITTIE M. OAKES and W. B. OAKES, Plaintiffs, Respondents,
against
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, NEW York, Defendant, Appellant.

2 H. A. EDWARDS, Plaintiff, Respondent,
against
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, NEW York, Defendant, Appellant.

C. E. WARD, Plaintiff, Respondent,
against
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, NEW YORK, Defendant, Appellant.

A. W. WELLING, Plaintiff, Respondent,
against
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, NEW YORK, Defendant, Appellant.

3 *Case.*

This action was commenced on January 15, 1898, for the purpose of recovering the penalty provided for in sections 1894 and 1895 of the Revised Statutes for not entering satisfaction in the proper office on a mortgage, given by said plaintiffs, respondents, to the said defendant, appellant.

This action was heard before his honor, Judge R. C. Watts, and a jury at the November term of the court for Darlington county.

THE STATE OF SOUTH CAROLINA,
Darlington County.

Court of Common Pleas.

LAWRENCE S. WELLING and MARION BONNOITT, Plaintiffs,
against
EASTERN BUILDING AND LOAN ASSOCIATION, Defendant.
Complaint for Relief.

The complaint of the above-named plaintiffs respectfully shows:

First. That the plaintiffs reside at Darlington Court-house, county of Darlington, in the State of South Carolina, and are citizens of the said State.

4 Second. That the defendants, The Eastern Building and Loan Association, above named, is now and was at the times hereinafter mentioned, a foreign corporation, duly chartered under the laws of the State of New York. That at some date prior to the times hereinafter mentioned the defendants entered and commenced carrying on a building and loan business in this State, and, for this purpose and in accordance with the laws of this State, appointed and kept a resident agent therein on whom legal process might be served so as to bind the defendant and give to the court issuing the same, jurisdiction.

Third. That the present resident agent of the said defendant in this State is T. H. Spain, Esq., who resides at Darlington Court-house in said State, and that the defendant has property in this State.

Fourth. That on the first day of May, A. D., 1891, the plaintiffs at Darlington Court-house, in the county of Darlington and State of South Carolina, executed and delivered to the defendant a mortgage of certain real estate situate in the town and county of Dar-

lington and State aforesaid, and particularly described in said mortgage, which was recorded in the office of register of mesne conveyance for the county of Darlington on the 10th day of June, A. D. 1891, in Book No. 15, pages 301, 302, 303, 304 and 305.

Fifth. That the aforesaid mortgage was given to secure the payment of the sum of sixty-one hundred and seventy-seven and $\frac{61}{100}$ dollars, the same being the principal, interest and premium
5 of a loan from the defendant of forty-five hundred dollars, which said loan was made pursuant to the by-laws of the said defendant's association, and was evidenced and secured by seventy-eight (78) certain promissory notes of even date with said mortgage, and payable to the said defendant association at its offices in Syracuse, in the State of New York, one on or before the last Saturday of each and every month until all of said seventy-eight notes were fully paid, together with interest on each of said notes, after maturity, at the rate of six per cent. per annum until said notes were fully paid.

Sixth. That all of said notes, and the mortgage given to secure the same have been fully paid in accordance with the terms, stipulations and conditions of the said notes, mortgage and by-laws of said defendant association.

Seventh. That the last of said notes, amounting to the sum of forty-one and $\frac{70}{100}$ dollars, falling due on or *or* before the last Saturday in October, 1897, these plaintiffs, on the 28th day of September, A. D. 1897, remitted the amount of the same to the defendant by express, carriage prepaid, at its home office in the city of Syracuse in the State of New York, and said sum, remitted as aforesaid, was received by the defendant.

Eight. That at the time of making the remittance aforesaid, to wit, on September 28th, 1897, these plaintiffs also remitted and tendered the fees of office to the defendant, and requested the defendant to enter satisfaction of the mortgage aforesaid, in accordance with the provisions of vol. I, chapter 42, article 3, sections
6 1894 and 1895, of the Revised Statutes of South Carolina of 1893; and that although the said fees of office, remitted and tendered as aforesaid, were received by the defendant, and more than three months have elapsed since said remittance and tender were made, and the same received by the defendant, and more than three months have elapsed since said request was made to enter satisfaction of the mortgage aforesaid, yet the defendant has failed and neglected to enter satisfaction of said mortgage, and has unlawfully refused and still refuses so to do, contrary to and in violation of the act aforesaid.

Ninth. That *the* reason of such failure, neglect and refusal of the defendant to satisfy the aforesaid mortgage, the defendant forfeited to, became and is indebted to these plaintiffs in the sum of eighteen hundred dollars, and that thereby this action accrued in favor of these plaintiffs against the said defendant, according to the provisions of the act aforesaid, for the said sum of eighteen hundred dollars.

Wherefore, the plaintiffs demand judgment against the defendant for the said sum of eighteen hundred dollars, with costs.

J. J. WARD,
Plaintiffs' Attorney.

(Verified.)

7 STATE OF SOUTH CAROLINA, }
Darlington County. }

Court of Common Pleas.

LAWRENCE S. WELLING and MARION BONNOITT, Plaintiffs,
vs.
EASTERN BUILDING AND LOAN ASSOCIATION, Defendant. } Answer.

The defendant, The Eastern Building and Loan Association, of Syracuse, N. Y., answering the plaintiffs' complaint herein:

First. Alleges that the true name of this defendant is, and always has been, the "Eastern Building and Loan Association of Syracuse, N. Y.," and not "Eastern Building and Loan Association," in which name it is sued.

Second. And this defendant further answering admits that the plaintiffs reside at Darlington Court-house, county of Darlington, in the State of South Carolina, and are citizens of the said State; that the defendant is now, and was at the times hereinafter mentioned, a foreign corporation, duly chartered under the laws of the State of New York; that in accordance with the laws of the State of South Carolina the defendant has appointed and kept a resident agent therein on whom legal process might be served so as to bind
8 the defendant, and that the present resident agent of the defendant in this State is T. H. Spain, Esq., who resides at Darlington Court-house in said State; and that said plaintiffs executed and delivered to the defendant a mortgage of certain real estate situate in the town and county of Darlington, and State first aforesaid, and particularly described in said mortgage, which was recorded in the office of the register of mesne conveyance for the county of Darlington, on the 10th of June, A. D. 1891, in Book No. 15, page 301, &c.

Third. And each and every other allegation in said complaint contained, and not hereinbefore expressly admitted this defendant denies.

Fourth. And for a further and separate answer and defense to the plaintiffs' complaint herein, the defendant alleges that it was duly incorporated on or about March 1, 1890, under chapter 122 of the Laws of 1851 of the State of New York, and the acts amendatory thereof and supplementary thereto: that subsequently and on or about February 2, 1891, the plaintiffs duly applied in writing, to the defendant at its home office in the city of Syracuse, N. Y., for fifty shares of its instalment stock, and agreed thereby to abide by all the terms, conditions and by-laws contained or referred to in its certificate of shares, and also to comply with all the rules and regu-

lations of the defendant association; that on or about said date defendant accepted said application and issued to the plaintiffs at its home office in the city of Syracuse, N. Y., fifty shares of its instalment stock of the par or maturity value of $100.00 per share, and amounting in all to $5,000.00, represented
9 by its five several certificates of shares, Nos. 4967, 4968, 4969, 4970, and 4971, which said certificates of shares were on or about said date duly accepted by the plaintiffs. That subsequently and on or about the sixth day of April, 1891, the plaintiffs applied to the defendant at its home office in the city of Syracuse, N. Y., for an advance of the maturity value of the aforesaid shares, to wit: the sum of $5,000.00, in accordance with the rules and regulations of this defendant, said advance to be at a gross premium of ten per cent. and interest and running premium each at the rate of five per cent. per annum, payable monthly, and offered to secure the repayment of the same in accordance with the rules and regulations of the defendant by security on the premises referred to in the complaint herein; that said application so made as aforesaid, was accepted and granted to said plaintiffs by the board of directors of this defendant at its said home office; that thereupon said advance of the said maturity value of said shares, was duly made by this defendant and secured to be paid by the mortgage referred to in the complaint herein, and by the collateral assignment to this defendant by said plaintiffs of the aforesaid shares of stock; that the monthly payment mentioned and referred to in said mortgage comprised the monthly payment of dues estimated to accrue and become payable on said shares until the same should mature and reach their par value, said dues being at the rate of 75 cents per share per month, and in addition thereto, the aforesaid monthly interest and premium during said period; that under and by virtue
10 of the by-laws of this defendant, which was expressly made a part of said mortgage, and the provisions of the defendant's charter or articles of association, both of which said plaintiffs for themselves, their heirs, executors, administrators and assigns, covenanted and agreed to keep and perform, as well as said law under which defendant is incorporated, the plaintiffs agreed and became obligated to pay the dues on said shares until the same matured, and the interest and premium aforesaid on said advance until said maturity; and that said dues and interest and premium are by virtue of defendant's articles of association and by-laws, and the terms of said mortgage, all payable to this defendant at its home office in the city of Syracuse, N. Y. And this defendant further shows that no payments of dues on said shares have been made since the month of July, 1897, and that at the time of the commencement of this action, and at no time prior thereto, said shares of stock so advanced upon as aforesaid, had not attained the value of $100.00 each, and that all of said shares had not then, and have not now attained the value of more than the sum of three thousand one hundred twenty-one and $\frac{50}{100}$ dollars ($3,121.50); and that there is now justly due and owing to this defendant on account of said advance, and secured by said mortgage, after applying the value of said

shares so advanced or loaned upon by said defendant, the sum of one thousand eight hundred seventy-eight and $\frac{50}{100}$ dollars ($1,878.50) with interest, premium and fines on said advance from August 1, 1897, which sum the plaintiffs have never tendered or offered to pay to the defendant. And this defendant further shows that under the law under which it is incorporated, its charter or articles of association and by-laws, it is a mutual
11 institution in which all of the members thereof must, according to their respective holdings, share equally in the profits and losses, and that the defendant has no means of maturing its shares except by the contributions of its members thereon and the earnings to which the same are entitled; and that the rights of plaintiffs are not superior to that of any other member in the amount that they are entitled to receive under said shares, and that having been loaned or advanced the full maturity value of said shares they are bound by virtue of their agreements with this defendant to pay to it in cash, the difference between the value of said shares and the amount of said advance together with any arrearages of interest and premium, if any, or to continue the payment of the monthly dues on said shares and the interest and premium on said advance until said shares have matured, before they are entitled to a satisfaction and discharge of their said mortgage, and that the plaintiffs have not performed either of said obligations.

Wherefore, the defendant demands judgment, dismissing the plaintiffs' complaint with costs.

T. H. SPAIN,
Defendant's Attorney.

(Verified.)

Defendant interposed an oral demurrer to the complaint (which was reduced to writing in accordance with the rule of the court) on the following grounds:

"That the complaint does not state facts sufficient to constitute a cause of action in this; that the complaint does not
12 allege the law of the State of New York, governing the mortgage contract, and which is a part and parcel of the mortgage contract."

The COURT: There are sufficient allegations in the complaint, if true, and the demurrer admits them to be true, to show that the notes were paid in accordance with the by-laws of the company.

Defendant excepts.

Plaintiffs' Testimony.

Introduces articles of incorporation of 1890. Marked Exhibit A.
Introduces copy of by-laws of defendant company of 1890. Marked Exhibit B.

L. S. WELLING, plaintiff, testified.

Direct examination by Mr. W. S. DARGAN:

Q. I hand you a paper purporting to be a mortgage; do you recognize that paper?
Ans. Yes, sir.
Q. Is that the paper set out in your complaint in this case?
Ans. Yes, sir.
Q. Given to whom?
Ans. Given to the Eastern Building and Loan Association.

Plaintiff introduces mortgage. Marked Exhibit C.

Q. What was that mortgage given to secure?
Ans. Forty-five hundred dollars I borrowed from them.
13 Q. How evidenced?
Ans. By seventy-eight notes.
Q. Have you got those notes?
Ans. I have.
Q. Where are they?
Ans. They are in my letter book.
Q. Are these the notes?
Ans. They are seventy-five of them.
Q. What is the amount of those notes?
Ans. Seventy-nine dollars and twenty cents each.
Q. Have you paid those notes?
Ans. Yes, sir.

Plaintiff here introduces seventy-five notes for $79.20 each, made to the Eastern Building and Loan Association and signed Lawrence S. Welling and Marion Bonnoitt, and numbered 8113 and 8187 both inclusive, and marked Exhibit C 1.

Q. When did you pay them?
Ans. I paid them on or before the last Saturday in each month.
Q. From what time?
Ans. I don't remember what time it was, I think it was in 1891, along about January I think it was.
Q. Who is the joint maker on those notes with you?
Ans. My partner, Mr. Bonnoitt.
Q. What was the business of Bonnoitt and yourself?
Ans. Hardware merchants.
Q. For what purpose was that money borrowed?
Ans. Borrowed to build our store over there.
14 Q. For what amount did you give the notes?
Ans. I think it was some sixty-one or sixty-two hundred dollars.

Q. It is stated in the complaint $6,177.60?
Ans. Somewhere in that neighborhood.
Q. You say there are only seventy-five of the notes?
Ans. Only seventy-five of them. There were seventy-eight given but I only have seventy-five here.
Q. Where are the other three?
Ans. They are held by the association in Syracuse.
Q. Why are not those in your possession?
Ans. We made them a tender of payment. We sent them the money and they held the three notes. The face value of the three notes was $41.70. Those notes they would not return to us because we didn't send them $79.20.
Q. Why didn't you send them $79.20?
Ans. Because we didn't owe it. We only signed the notes for $41.70.
Q. What did those notes call for?
Ans. $41.70.

Defendant admits the tender of payment of the last three notes at the office required and also admit- the request made by plaintiff to mark the mortgage satisfied.

Plaintiff introduces the three notes referred to above given by Lawrence S. Welling and Marion Bonnoitt to the Eastern Building and Loan Association, numbered 8188, 8189, 8190, respectively, the face value of each $41.70. Marked Exhibit C 2.

15 Q. Mr. Bonnoitt is your copartner in this matter?
Ans. Yes, sir.

Q. I hand the witness this pamphlet, entitled "The definite contract plan of the Building and Loan Association of Syracuse, New York" as a part of their literature, issued at the time of this loan which was identified as a part of their literature in the taking of the testimony *de bene esse* and I ask this plaintiff if he ever saw this pamphlet?

Defendant objects on the ground that the mortgage speaks for itself and the only issue here is the payment of the mortgage.

Mr. DARGAN: The purpose we have in offering this pamphlet, may it please your honor, is not that it shall be in derogation of the contract or to change its terms, but to show that this literature is made a part of the by-laws of the association which we have introduced.

By the COURT: You made the contract in accordance with the by-laws; if you can show anything in the by-laws sustaining your position I will allow it, otherwise I rule it out. In other words the mortgage speaks for itself and must be construed with what is in it. If there is any by-laws that allows that literature to be issued or anything of that sort it must come in, otherwise the by-laws speak for themselves.

Mr. DARGAN: Under these by-laws the board of directors are authorized to make such laws as they deem necessary and to make such contracts as they deem necessary for the conduct of the busi-

ness of the association. Under that they assume to issue a
16 certificate, on that certificate are fifteen conditions. The conditions in the by-laws, the terms and conditions upon which that certificate is issued, and the by-laws and articles of agreement constitute the contract. One of the terms of the conditions on the certificate which is incorporated in their by-laws and authority for it is this: "15. No agent has the authority to change this contract in any way and the association assumes no obligations for any statement not contained in its printed literature."

The COURT: I will allow it under that article. I think after an inspection of the paper it is admissible because it purports to be from the secretary of the association under the directions of its directors.

Defendant excepts.

Pamphlet entitled "The definite contract plan Eastern Building and Loan Association of Syracuse, N. Y.," is introduced by plaintiff and marked Exhibit D.

Q. Mr. Welling, have you ever seen that pamphlet, or one like it before—"The definite contract plan"?

Ans. Yes, sir.

Q. When did you first see it?

Ans. When the agent, Mr. Carpenter, came along here, I think it was in January, 1891.

Q. Was the stock explained to you?

Objected to on the ground that it is irrelevant and immaterial, and that what the agent said to him is not competent.

Objection sustained. Exception noted.

17 Q. Were you induced by that means to take it?

Objected to. Objection sustained. Plaintiff excepts.

Q. After showing you that, you did take it?

Objected to as immaterial whether he did or did not.

By the COURT: He can state that he saw that before he took it, but he cannot say he was induced by that to take the stock.

Q. I hand the witness another pamphlet entitled "Endowment outdone."

Defendant objects to plaintiff's attorney stating title of pamphlet before it is admitted in evidence.

Cross-examination by Mr. ELLIOTT:

Q. Before you obtained this loan from the association you signed other papers, did you not, than those which have been mentioned to you?

Ans. I don't remember.

Q. Didn't you sign an application for stock that was in writing?

Ans. Yes, sir.

Q. Did anybody join you in that application?

Ans. My partner.

Q. Mr. Bonnoit?

Ans. Yes, sir.

Q. You two made that?

Ans. Yes, Welling & Bonnoitt.

Q. You sent that in to the association at Syracuse, New York?

Ans. I gave it to their agent here.

18 Q. About how long before you made application for a loan did you send that application for stock in?

Ans. I think about two or three months.

Q. If you recollect, didn't you make your application for stock on or about the 2nd day of February, 1890?

Ans. I think it was in February.

Q. Wasn't that followed up by you- application for a loan subsequently, in April?

Ans. I think so.

Q. Do you know whether that application for stock contained what is called a proxy or not, giving the power to some one in Syracuse to vote on your stock?

Ans. I don't know whether it did or not.

Q. I show you this paper and ask you if that is the application for shares which you signed?

Ans. Yes.

Defendant introduces application for shares signed by Welling & Bonnoitt, dated 28th January, 1891, witnessed by one Samuel Carpenter. Marked Exhibit E.

Q. After you executed that paper did you receive this certificate of stock from defendant? (Hands paper to witness.)

Ans. Yes, sir.

Defendant introduces certificate of shares of stock which bears date February 2, 1891, for ten shares of one hundred dollars each, marked Exhibit F.

Q. About what time did you receive this certificate?

Ans. I couldn't tell but I received it in a short time after I made application.

Q. In a short time after the date of this application?

Ans. Yes, I think so, it was not more than two or three days.

19 Q. You held this certificate until about the time you obtained the loan from the defendant association?

Ans. Yes, sir.

Q. Did you and Mr. Bonnoitt, your partner, execute a paper which I show you, being an application for a loan?

Ans. Yes, sir.

Defendant introduces application for loan, bearing date April 6th, 1891, and marked Exhibit G.

Q. This was sent to the association at Syracuse, New York?

Ans. Yes, sir.

Q. And in it you apply for a loan of five thousand dollars?

Ans. Yes, sir.

Q. You got five certificates of stock?
Ans. Yes, sir.
Q. Each for one thousand dollars?
Ans. Yes, sir.
Q. I suppose they were numbered as they appear on these certificates, from 4967, 4968, 4969, 4970, and 4971?
Ans. Yes, sir.
Q. When you received these certificates of stock, or any one of them, you noticed that upon the back was printed the by-laws of the association?
Ans. Yes, sir.
Q. You paid how many of those notes?
Ans. Seventy-five.
Q. And three of them are with the association at Syracuse?
Ans. Yes, sir.
Q. They advised you when you sought to pay those notes
20 that they did not pay up what they claimed to be, the amount of the balance of your indebtedness to the association?
Ans. That is what they claimed.
Q. And they informed you that your share of stock upon which you had obtained a loan had not reached maturity, or par value?
Ans. Yes.

Redirect examination:

Q. You say that you have paid seventy-five of the notes?
Ans. Yes, sir.
Q. And three of the notes are in the hands of the Eastern Building and Loan Association?
Ans. Yes.
Q. Have you paid those?
Ans. I tendered payment. I sent them the money.
Q. Have they got the money?
Ans. I don't know. I have got their receipt.
Q. You sent them the amount of the notes?
Ans. Yes.
Q. And directed the payment of them?
Ans. Yes; directed the payment of them.
Q. When you signed those notes and that mortgage did you sign that on the back of those certificates?

(Hands paper to witness.)

Ans. Yes, sir.
Q. What did you do with them then?
Ans. I gave them to their lawyer here to be sent back to the company.
Q. When you signed the notes you gave up the certificates of shares?
Ans. Yes; I withdrew my shares altogether.
21 Q. After signing that?
Ans. Yes.

Q. Is that what you did on each one of these shares?
Ans. Yes, sir.

Examination by Mr. J. J. WARD:

Q. What time did you pay the money for those notes; and where did you pay it?
Ans. They had several agents here. I was their first agent.

Objected to on the ground that it is irrelevant and immaterial, as the contract shows where the money should be paid. If they should seek to show by proof some different place of payment than that specified in the contract it is improper evidence.

The COURT: The complaint says they were to be paid at the home office at Syracuse, New York.

It is admitted by the defendant that the mortgage is not satisfied of record although the defendant was requested by the plaintiff to do so as alleged, the defendant assigning as a reason for its refusal to do so that the mortgage had not been paid according to its terms and conditions.

Q. It is stated in your mortgage that the consideration of it was five thousand dollars? Is that right?
Ans. Yes.
Q. It was given on your property here in town?
Ans. Yes.
Q. I see this clause in your mortgage: "This grant is intended as a security for the payment of the sum of sixty-one hundred
22 and seventy-seven and $\frac{00}{100}$ dollars, the same being the principal interest and premium of a loan from said association."
Ans. Yes.
Q. "Which said loan was made pursuant to and accepted under the provisions of the by-laws of said association, and which said by-laws have been read by the mortgagors and are hereby made a part of this contract; which said loan is evidenced and secured to be paid by seventy-eight certain promissory notes of even date herewith, executed by the said Lawrence S. Welling and Marion Bounoitt, payable to the said association at its office in Syracuse as follows: One of each of said notes is to be paid on or before the last Saturday of each and every month until all of seventy-eight notes are fully paid, together with interest on each of said notes after maturity at the rate of six per cent. per annum, payable semi-annually until said notes are fully paid?"
Ans. That is right.
Q. Were all the covenants and agreements agreed to be performed by you in that mortgage performed by you?
Ans. Yes.
Q. The actual amount received by you from the association was how much?
Ans. Forty-five hundred dollars.

Recross-examination by Mr. ELLIOTT:

Q. I understood you to say last night, Mr. Welling, that you were at one time an agent or representative of the defendant here?

Ans. I was agent of the company.

Q. Of the Eastern Building and Loan Association?

Ans. Yes, sir.

23 Q. When did you become such agent?

Ans. When they first started business here—I think about February, 1891.

Q. How long did you continue such agent?

Ans. I don't remember, I suppose about a year.

Q. So you were the agent of the association when you and your partner took out this stock?

Ans. Yes, sir.

Q. You were the agent of the defendant association and its representative here when you applied to it for this loan?

Ans. I don't know whether it was then, or that I applied through Mr. Carpenter when he was here.

Q. It is a fact that you were the agent of the association on the 6th April, '91, when you applied for this loan of five thousand dollars?

Ans. Yes.

Q. Who appointed you as agent?

Ans. I think I was recommended by Mr. Carpenter and appointed by the association.

Q. Did you receive a certificate of authority or a paper bearing the signature and seal of the association which showed your authority to act as their agent?

Ans. I am not sure but I think I did.

Q. Did they furnish you with any blanks?

Ans. Yes.

Q. And among those were there blank applications for stock?

Ans. Yes, sir.

Q. And blank applications for loans?

Ans. Yes.

24 Q. Any other papers?

Ans. This literature they had.

Q. What do you mean by "this literature"?

Ans. That little book they had in evidence last night.

Q. This little prospectus that was admitted in evidence?

Ans. Yes.

Q. Anything else?

Ans. A whole lot of cards and things like that—a good deal of literature.

Q. That they furnished to you?

Ans. Yes.

Q. As their agent?

Ans. Yes.

Q. I suppose, Mr. Welling, you read it yourself as their agent, to qualify yourself to transact business for them?

Ans. Yes, sir.
Q. You read over their act of incorporation?
Ans. No, sir.
Q. You read their by-laws?
Ans. No, sir. I never read over them.
Q. Never read over them as their agent?
Ans. No, sir.
Q. Did you start to sell their stock?
Ans. I solicited stock for them. Mr. Carpenter sold the most.
Q. You continued their agent for a year or more?
Ans. Yes, sir, about a year.
Q. When you applied for stock, as I understand you, you were their agent?
Ans. No, sir.
25 Q. When you applied to purchase this stock?
Ans. No, sir.
Q. You were their agent the latter part of January or February, 1891?
Ans. Yes.
Q. How soon after you applied for and received stock for five thousand dollars from the association did you become their agent?
Ans. I don't know exactly.
Q. Give us your best recollection.
Ans. I suppose something within a month; about a month probably.
Q. Did you receive any circulars or literature or advertising matter from anybody before you became agent?
Ans. Yes, sir.
Q. From whom?
Ans. Mr. Carpenter.
Q. What did you receive?
Ans. That little book they had in evidence last night.
Q. At the time you took your loan you were their agent?
Ans. Yes, sir.
Q. You were handling their literature?
Ans. Yes, sir.
Q. You have just testified that you complied with all the conditions of this mortgage—which calls for a compliance with the by-laws of the association, and which states that you shall pay all fines and penalties and other charges that may be made against you by the association—now the only thing you have done, or you claim to have done to make that a full compliance is to pay the seventy-eight notes; that is to pay seventy-five notes and offer to pay the other three?
Ans. Yes.
26 Q. That is what you mean by a full compliance with the terms and conditions of the mortgage?
Ans. Yes, sir.
Q. That you have paid seventy-five notes and offered to pay the three others which the association would not take?
Ans. Yes.

Q. That is what you mean by a full compliance with the terms and conditions of the mortgage?

Ans. Yes, sir, and keeping up the property and taking the insurance they required.

Q. You kept it insured?

Ans. Yes, sir.

Q. You have complied with the terms of the mortgage by paying seventy-five notes and offering to pay the other three notes, and then that is what you mean by a full compliance?

Ans. Yes.

Q. And that is everything you have done?

Ans. Yes, sir.

Q. You are perfectly clear on that point?

Ans. Yes, sir.

The COURT: Have you paid any fines and forfeitures?

Ans. Yes, sir. I paid one fine.

Redirect examination:

Q. So they have been paid on this loan?

Ans. Yes, on this loan and other loans too.

Q. One fine accrued against you?

Ans. Yes, sir.

Q. And you paid it?

Ans. Yes, sir.

27 Q. Did you give a bond as agent of this association?

Ans. Yes.

Q. Whom did you give the bond to?

Ans. To the company.

Q. They sent you a lot of literature—applications for stock and loans, &c.; for what purpose was that literature sent to you?

Ans. For soliciting stock.

Q. To induce people to take stock?

Ans. Yes, sir.

Q. It was a part of your duty as agent to circulate this literature?

Ans. Yes.

Q. To unfold the plans of the association?

Ans. Yes, sir.

Q. This little pamphlet that was put in evidence was among the literature you circulated?

Ans. Yes.

Q. Mr. Elliott asked you if you thought that by paying the notes and keeping up the insurance, and I will add taxes, on the property generally that you complied with that contract, did you understand that there was anything else for you to do?

Defendant objects to witness stating what he may have understood as the mortgage speaks for itself. Objection sustained. Exception noted.

Q. Was that the contract you made?

Objected to.

Q. As their agent what did you do besides distributing this circular?

Defendant objects to witness giving a history of his agency, as irrelevant and immaterial. Objection sustained. Exception noted.

28 Q. What were your duties as agent?

Objected to.

Q. What were your duties as legal agent outside of being the receiver of the blanks and literature and distributing them?

Objected to as irrelevant.

Mr. DARGAN (addressing the court): I wish to show if he was authorized to receive money here, and did receive money here on these notes.

Objected to. Objection sustained. Exception noted.

Q. Did or not Welling & Bonnoitt pay these notes to a legal agent in Darlington?

Objected to.

The COURT: In any view of the case before you could show that Mr. Welling collected money as agent you would have to show that he was authorized by the company for that purpose. I will allow the witness to state whether he was authorized by the company to receive the money, but I tell you now, even if he was, this contract is to be construed by the New York law.

Mr. ELLIOTT: May it please your honor, their complaint declares that the money was sent to the home office at Syracuse, New York.

Q. To whom did you pay those seventy-five notes?

Objected to on the ground that it is immaterial and irrelevant. Objection overruled. Exception noted.

Q. To whom did you pay these notes of Welling & Bonnoitt?

Ans. Paid some to L. S. Welling, as their agent, some to J. D. Baird, and Geo. H. Edwards was another. That is all I can remember now.

Q. Did you pay any to Howard A. Edwards?

Ans. Yes.

29 Q. In other words these seventy-five notes were paid here to some agent?

Ans. Yes.

Mr. ELLIOTT (to the court): I move to strike out the testimony as inadmissible, irrelevant and immaterial.

The COURT: When the payment is made, even if the contract is to be construed by the laws of New York, they have a right to show that it was paid to an agent here. Suppose these papers were sent to an attorney here by the company, for collection, the lawyer here would have the right to collect them.

(Mr. DARGAN:)

Q. Where did these agents live?

Objected to. Objection overruled. Exception noted.

Ans. They lived here and were located here.

Recross-examination by Mr. ELLIOTT:

Q. You have stated that you paid some fines on this contract?

Ans. Yes, I think I paid one fine—no, sir, I paid fines on two others we were paying.

Q. You state that you paid fines on this and fines on another, is that right?

Ans. It strikes me I paid one fine. I have been paying up three loans. I am not certain which one it was.

Q. Your impression is you paid a fine on this?

Ans. I can't be certain.

Q. It is your impression?

Ans. I rather think I may have paid one fine.

30 Q. That is your impression, that you paid one fine on this contract? Do you recollect how much it was?

Ans. If I paid it on this it was twenty cents a share.

Q. How many shares?

Ans. If it was this loan, it was fifty shares.

Q. That is ten dollars in fines you paid?

Ans. That is if this is the loan, I paid ten dollars.

Q. When was that paid?

Ans. I don't know.

Q. About when do you think?

Ans. I haven't any idea.

Q. Since the loan was made?

Ans. Yes.

Q. Give us your best judgment?

Ans. I couldn't do it without going back to my book.

Q. Give us your best judgment, whether it was a year or two years or only six months.

Ans. I couldn't say with any accuracy at all whether it was one year, two years, three or four years.

Q. You recollect you paid ten dollars in fines?

Ans. Yes, I know I paid ten dollars in fines, either on this loan or on two others I was paying on. I don't say it was on this loan.

Q. The others were practically the same?

Ans. Yes, the securities were the same.

Q. Notes and mortgages?

Ans. Yes.

Q. The notes and mortgages, to all intents and purposes like this?

Ans. Yes, sir.

31 Q. Whom did you get word from that you owed fines—the agent or the company?

Ans. The company gave me notice.

Q. Sent you written notice?
Ans. Yes, sir.
Q. And said there were certain fines and gave you the amount?
Ans. Yes, sir.
Q. Whom did you pay them to?
Ans. Paid them to their agent here,—Mr. Edwards.
Q. Do you recollect that?
Ans. Yes, I recollect that distinctly.
Q. That you paid them to whom?
Ans. Mr. Edwards.
Q. Did you pay him the ten dollars fine, when you paid him other moneys or paid him that separately from other moneys?
Ans. No, sir. I paid him when I paid him the next monthly payment I paid him that.
Q. No question in your mind but what you owed the ten dollars?
Ans. No, sir.
Q. You paid it?
Ans. I paid the ten dollars.
Q. That is the only fine you ever paid?
Ans. Yes, sir.
Q. Aside from the ten dollars in fines, the keeping up of the insurance on the property described in this mortgage and the payment of the seventy-five notes, and the offer to pay the three other notes, that is all that that means by a full compliance with the terms of your contract?
Ans. Yes, sir.

32 Q. You have never complied with the terms of your contract in any other way than by the payment of the ten dollars in fines, keeping up the insurance and the payment of the seventy-five notes in evidence here and the offer to pay the other three?
Ans. No, sir.
Q. You mean that?
Ans. Yes, sir.

Redirect examination:

Q. Have there ever been any other demands on you except the payment of that money?
Ans. They made a demand when I sent them $41.70; they made a demand on me for more.
Q. That was the first demand?
Ans. Yes.
Q. They hadn't complained up to that time?
Ans. No, sir.
Q. The last three notes were $41.70 each?
Ans. Yes, sir.
Q. They wanted you to send on what when you sent that on?
Ans. I think the difference between $41.70 and $79.20.
Q. They wanted you to pay them $79.20 for a note of $41.70?
Ans. Yes, sir.

Q. You declined?
Ans. Yes.
Q. Did you ever know that they were going to insist on that until they did?

Objected to.

Q. Did you ever receive any information from them to that effect up to that time?
Ans. No, sir.
Q. You are not clear that you paid any fines on this particular loan?
Ans. No, sir; I am not positive about this loan.

33 Recross-examination:

Q. The company also wrote to you when you made this tender that your stock had not matured, didn't they?
Ans. Yes, sir.
Q. And that your loan could not be paid off until the shares of stock which were pledged to secure this mortgage should reach par value?
Ans. That is what they wrote me.
Q. They told you how much was unpaid?
Ans. No, sir; I don't remember that.
Q. They told you they couldn't accept your payment in the full discharge of your mortgage?
Ans. They did.
Q. After you received that information you made no attempt to mature those shares?
Ans. No, sir.
Q. None whatever?
Ans. No, sir.
Q. And afterwards brought this suit?
Ans. Yes, sir.

Redirect examination:

Q. Did they tell you how long you had to pay to mature them?
Ans. I think they told me I had to pay about twenty-two months longer.
Q. You declined?
Ans. I did.

Recross-examination:

Q. Did you get a letter from them to that effect?
Ans. Yes; I think I have got it.
Q. Did you give it to your counsel?
Ans. Yes.
34 Q. Did they give you any time when they thought they would mature?
Ans. Yes; I think I received a letter that I would have to pay

twenty-two months; or maybe Mr. Edmunds told me that. I am not certain about that.

Defendant's counsel here made the request that the plaintiff's counsel produce the correspondence between the association and this plaintiff with reference to the three notes that were offered to the company at Syracuse, and their reason for not accepting them and the information given by the association to the plaintiff.

The COURT (addressing defendant's counsel): If you have that letter, Mr. Dargan, you will have to deliver it, since you have examined the witness as to what that letter contains.

A letter is handed to defendant's counsel by plaintiff's counsel.

(Mr. ELLIOTT:)

Q. Did you receive this letter through the company? (Hands letter to witness.)

Ans. Yes, sir.

Q. You received that after you sent to Syracuse and offered to make payment of the last three notes?

Ans. This letter was in answer to one of the three payments of $41.70. They had my note for $41.70 and I sent that amount to them.

Redirect examination:

Q. Did you receive this letter from them? (Hands letter to witness.)

Ans. That letter was sent here while I was away. I saw it on my return here. It is from them.

35 Plaintiff's counsel introduces the following letters from defendant association to plaintiff: Letters dated Aug. 23, '97, Exhibit H; Aug. 28, '97, Exhibit I; Nov. 24, 1897, Exhibit R; Sept. 8, 1897, Exhibit K; Sept. 22, 1897, Exhibit M, and Sept. 25, marked Exhibit O.

Counsel for plaintiffs asks for the production of a letter dated Sept. 15, 1897, written by the defendant association to the plaintiff.

It is agreed that in order to save time that under notice to produce replies to the correspondence introduced that press copies of the letters be introduced—being the letters in reply to the letters from the defendant association. See Exhibits H, J, L, N, P, Q.

Recross-examination:

Q. After receiving these letters from the association that are in evidence now, did you ever pay, or offer to pay anything further to the association on account of your mortgage?

Ans. No, sir.

Plaintiff's counsel introduces the shares of stock of L. S. Welling and Marion Bonnoitt in the Eastern Building and Loan Association (marked Exhibit F) and calls attention to the endorsement on the back of each certificate.

36 EXHIBIT A.

Articles of Incorporation.

Whereas, articles of incorporation of the Eastern Building & Loan Association of Syracuse, N. Y., were heretofore filed with the clerk of the county of Onondaga in the State of New York, under and in pursuance of an act of the legislature of the State of New York, entitled "An act for the incorporation of building, mutual loan and accumulating fund associations," and known as chapter 122 of the Laws of 1851, and the acts amendatory thereof, and

Whereas, certain informalities and omissions exist in the original certificate of incorporation,

Now, therefore, we, the directors of said corporation under and in pursuance of an act of the legislature of the State of New York, passed April 5th, 1870, entitled "An act for the relief of corporations organized under general laws," do hereby make and file the following amended certificate of incorporation, viz:

Articles of Incorporation.

We, the undersigned, hereby associate ourselves together and agree to become incorporated under the provisions of the act entitled "An act for the incorporation of building, mutual loan and accumulating fund associations," and known as chapter 122 of the Laws of 1851, and the acts amendatory thereof and supplemental thereto, under the name of the Eastern Building & Loan Association
37 of Syracuse, N. Y., for the purpose of engaging in and carrying on business as hereinafter mentioned.

I.

The name of this corporation shall be the Eastern Building & Loan Association of Syracuse, N. Y.

II.

This association is formed for the purpose of purchasing real estate; for the erection of buildings or other improvement, and the improvement of lands; for aiding members in acquiring or improving real estate, or of removing incumbrances thereon by means of advances; for accumulating a fund for the benefit of members who do not obtain advances; and for the purpose of conducting the general business of a building & loan association and providing the advantages usually expected from savings banks and other institutions of like character.

III.

The principal place of business of this association shall be located at Syracuse, N. Y. But branches or agencies may be established and business done in any part of the State of New York or in any State or Territory of the United States as the board of directors may direct.

IV.

The time of the regular meeting of this corporation shall be the second Monday in May of each and every year, and special meetings may be called at any time upon the written call of a majority of the directors of this association, or of ten or more shareholders therein.

38 A quorum shall consist of not less than a representation of at least five hundred (500) shares of stock of said association; and not less than one-half the number of said directors in cases where a directors' meeting shall be found necessary.

V.

The qualification of members shall be as follows: Any person upwards of twenty-one years of age, or parents or guardians of children, may become members of this association and shall become such upon subscribing for two or more shares of stock in this association as prescribed by the by-laws thereof.

VI.

The management of all the business of the association shall be vested in a board of nine directors who shall be chosen at each regular meeting. Said board shall have full power and authority to fill all vacancies, and make such by-laws, rules and regulations for the general management and conduct of the business of this association as they may deem necessary.

The officers of this association shall consist of a president, vice-president, secretary and general manager (combined), and treasurer, who shall be chosen by and from the board of directors at their first regular meeting after the annual meeting of the association; also an attorney who shall at the same time be chosen by the board of directors from their number or from one of the stockholders. Said officers to receive the vote of a majority of said board present

39 at any meeting. And said board of directors shall in the same manner, also designate a trustee who shall be chosen at its first regular meeting.

Any of the officers, the trustee and attorney of this association, may be removed or suspended from office by a majority of the board of directors and a majority of the number of shares of stock of said association.

VII.

The duties of the said several officials shall be as follows: The directors shall pass upon the sufficiency of all property offered as security for loans and attend generally to the financial affairs of the association as provided by the by-laws to be hereafter adopted.

It shall be the duty of the president to preside at all meetings of the shareholders and of the board of directors; to sign certificates of stock and sign all releases of mortgages, and he shall perform all other duties pertaining to said office as provided by the by-laws to be hereafter adopted.

The vice-president shall perform all the duties of the president in his absence.

It shall be the duty of the secretary and general manager to attend all meetings of the shareholders and board of directors; to receive all moneys paid into the association and pay the same over to the treasurer and take his receipt therefor; he shall keep all accounts of the association; conduct all correspondence; sign all orders on the treasurer and sign all certificates of stock under
40 the direction of the board of directors; whenever required by the board he shall submit a statement of the financial affairs of the association. The books of the association shall be kept by him and at all times be subject to the inspection of the board. He shall receive from the attorney, after being recorded, all deeds or other documents pertaining to the business of the association and make proper entry of the same in books kept for that purpose. He shall attend to all printing and publication and have general supervision over all agents or agencies of this association, and any further duties as may be prescribed by the by-laws to be adopted.

It shall be the duty of the treasurer to receive all moneys from the secretary and deposit the same in the name of the association in such bank as shall be designated by the board of directors. He shall keep correct account of all moneys received and paid out by him. He shall make to the board of directors when required a statement in writing of the full business of his office.

It shall be the duty of the attorney to examine all abstracts and records relating to the title of real estate offered as security for loans and certify in writing to the board of directors all facts that might affect the interests of the association in case such security may be accepted. He shall prepare all papers incident to making loans and secure loans by the association and cause them to be properly executed and such other duties as may be required by the by-laws of this association.

VIII.

All officers holding responsible positions shall execute to
41 the association such bonds for the faithful performance of their duties as the board of directors may require.

IX.

The entrance fee of new members and new shares shall be one dollar ($1.00) per share of stock in said association. The monthly dues per share shall be seventy-five cents ($.75).

There shall be a transfer fee of two dollars ($2.00) on each and every certificate of shares transferred.

The fines for non-payment of dues shall be ten cents ($.10) on each and every share of stock unpledged, and twenty cents ($.20) on all stock pledged for each and every month the payment may be in arrears.

In case a monthly payment on any share shall become past due and payable for a period of six months or more, such share shall be

sold for the purpose of paying the arrearages. The proceeds of the sale shall first be used to pay all back monthly payments and fines and the balance remaining after paying all accrued fines and monthly payments shall be paid to the member in whose name the stock stands at the time of sale. If the stock brings no more than enough to pay the accrued fines and monthly payments, it shall be bid in by the association and cancelled and the amount standing to the credit thereof in the loan fund shall be divided among the other shares as profits.

X.

The advances or loans made to any member of this association shall not exceed the face value of the stock owned by him,
42 and except as hereinafter stated shall be upon satisfactory first-mortgage real-estate security and be under such rules and regulations as the by-laws and the board of directors may require.

Loans may be made upon shares in good standing and in force one year to an amount not exceeding 90 per cent. of the monthly dues paid to the association upon such shares as collateral security, and upon such note, bond or other obligation or instrument as the board of directors and by-laws may require.

A uniform premium of 10 per cent. shall be paid and allowed by the borrower upon each loan; and upon all loans, the borrower shall pay interest at the rate of 5 per cent. per annum and a premium of 5 per cent. per annum as a redemption fee and the same shall be paid on the last Saturday of each month during the continuance of said loan at the principle office of the association. In case the monthly installments on loans are not paid as aforesaid, then interest at the rate of 6 per cent. per annum, payable semi-annually, shall be collectable thereon; and in case default shall be made in the payment of the regular monthly instalments, fees or dues, the association may compel payment of principal, interest and premium, assessments, fees or dues, by proceeding upon the note or other obligation and mortgage, which shall at once become fully due and payable, and the association may cancel and treat as forfeited the shareholder's shares of stock, whether deposited as collateral security or not, and all payments previously made thereon shall be forfeited to the association.

Pledged shares may be transferred upon consent of the
43 association by transferring the mortgage security upon payment of the fee therefor provided all assessments, instalments, dues and charges thereon are paid to date and subject to such other regulations, if any, as the by-laws may provide.

Any shareholder may have his mortgage transferred or changed from one piece of property to another, by giving thirty days' notice in writing, the shareholder to pay all expenses incurred by the transfer of the same.

Loans may be prepaid and the mortgaged property released upon application to the association and giving thirty days' notice in writing of the intention. An equitable discount shall be allowed therefor to be determined by the board of directors.

XI.

Unpledged shares may be transferred upon consent of the association, upon payment of the fee therefor, provided all dues and claims thereon have been paid to date.

XII.

Shares which are not pledged may be withdrawn before maturity provided the same are in good standing and all dues and fines have been paid to date. The association shall have the right to require at least thirty days' prior notice of intention to withdraw. Upon such withdrawal the holder will be entitled to receive thereon the amount of the monthly instalments that have been paid with such additional interest, if any, as the by-laws may provide, except that the same shall not exceed the net earnings of said stock. But in no event shall the association be required to pay to withdrawing members more than one-half of the net receipts of the monthly instalments paid in during the month in which the withdrawals occur. In no case shall a withdrawal from the loan fund exceed the amount of the instalments paid thereto, together with the estimated amount of the earnings upon the same.

XIII.

The association shall have the right to mature any shares of one year's standing and to issue in the place thereof paid-up certificates of shares payable at maturity with interest at the rate of 6 per cent. per annum or at maturity of stock in pledge payable at maturity of loan.

It shall also have the right to cancel any unpledged certificate of shares after it has been in force three years upon the payment to the holder of the total amount of instalments paid thereon, together with interest thereon at the rate of 8 per cent. per annum to date of cancellation.

XIV.

The qualification of voters at a meeting shall be that they shall be members in good standing as provided by the by-laws and be entitled to one vote for each share of stock held. Voting shall be by ballot, and the highest number of votes shall elect.

Any member may authorize another member by written proxy to vote his stock at any one meeting, provided such proxy shall specify the particular meeting at which the same is to be used, and the same shall be filed with the secretary of the home office at least twenty days before the opening of such meeting. In all other cases, the proxy given with the application for stock shall be operative.

XV.

The amount to be paid to the owners of shares at maturity shall be one hundred dollars ($100) per share.

XVI.

The by-laws of this association shall not be amended except at an annual meeting of said association and by a majority vote of the stock outstanding.

XVII.

The amount of capital stock of this association shall be fifty millions of dollars ($50,000,000) divided into shares of one hundred dollars ($100) each as provided by the by-laws.

The funds of this association shall be divided into two classes, which shall be called respectively the loan fund and the expense fund. The expense fund shall consist of all admission, transfer, insurance, abstract and attorney's fees, amounts paid for insurance or taxes on property on which loans have been made, fees, costs and disbursements of foreclosure, together with ten cents per share per month from the monthly payment on stock, and these funds
46 so constituted shall be devoted to the payment of operating expenses and said insurance and taxes. The loan fund shall consist of all receipts which do not go into the expense fund as hereinbefore provided together with all interests and accumulations from whatever source.

No money can be drawn from the loan fund for any other purpose than the making of loans on security as provided by the by-laws and to pay amounts due withdrawing shareholders.

The funds of the association not required for advances on shares may be invested by the board of directors in such securities as the savings banks of the State of New York are permitted to take, or deposited at interest in the savings banks, trust companies or duly incorporated banks of said State and which are in good standing.

XVIII.

The stock of this association may be issued in series if the board of directors may so decide.

The directors of this association may enter into such contracts and agreements and appoint such agents for its business management as they may deem for the best interests of its affairs.

XIX.

These articles of incorporation may be amended at any annual or special meeting of the association, provided the same is pre-
47 viously endorsed by resolution of the board of directors and adopted by a majority vote of stock of the association.

Dated Syracuse, February 22nd, 1890.

HENRY H. LOOMIS.
DWIGHT H. MURRAY.
JNO. J. W. REYNOLDS.
LUCIUS M. KINNE,
WILLIAM H. EMORY.
CHARLES A. POOLER.
ALEX. H. HUBBS.
ARTHUR B. KINNE.
ROBERT W. ANDREWS.

STATE OF NEW YORK, } ss:
Onondaga County, }

On this February 22nd, 1890, before me, the subscriber, personally appeared Henry H. Loomis, Dwight H. Murray, Jno. J. W. Reynolds, Lucius M. Kinne, William H. Emory, Charles A. Pooler, Alexander H. Hubbs, Arthur B. Kinne and Robert W. Andrews, to me known to be the persons named in and who executed the foregoing certificate and duly and severally acknowledged that they executed the same.

E. A. CHRISTY,
Com'r of Deeds, Syracuse, N. Y.

48 The foregoing articles duplicated in the original, signed and dated as follows:

Dated Syracuse, February 22nd, 1890.

HENRY H. LOOMIS, *President.*
DWIGHT H. MURRAY,
Vice-President.
JNO. J. W. REYNOLDS,
Secretary and General Manager.
LUCIUS M. KINNE, *Treasurer.*
SAMUEL R. STEARN, *Attorney.*
WILLIAM H. EMORY,
CHARLES A. POOLER,
ALEXANDER H. HUBBS,
ARTHUR B. KINNE,
ROBERT W. ANDREWS,
Directors.

SYRACUSE, *February* 22, 1890.

At a meeting of the undersigned incorporation of the Eastern Building & Loan Association held at the rooms of the State Bank of Syracuse in the Syracuse Savings Bank building, Syracuse, N. Y., the following proceedings were had:

Said Eastern Building & Loan Association effected a temporary organization by calling a meeting to order at 4 p. m. by electing as temporary president Henry H. Loomis and John J. W. Reynolds, secretary.

The articles of incorporation, a copy of which is hereto annexed, were duly signed and executed by all present.

49 By-laws were adopted after a full discussion of the same.

The following officers were then elected as provided by said articles of incorporation and said by-laws:

Henry H. Loomis, president.
Dwight H. Murray, vice-president.
John J. W. Reynolds, secretary and general manager.
Lucius M. Kinne, treasurer.
Samuel R. Stearn, attorney.

Directors:

Henry H. Loomis,	Dwight H. Murray,
John J. W. Reynolds,	Lucius M. Kinne,
Alexander H. Hubbs,	Charles A. Pooler,
William H. Emory,	Robert W. Andrews,

Arthur B. Kinne.

The place of business designated as Syracuse, N. Y., and the location at present 83, 84, and 85 Weiting block.

The articles hereto annexed are a true copy of the certificate of incorporation signed by the foregoing members and incorporators.

JNO. J. W. REYNOLDS,
Secretary and General Manager.

Verified.

50 EXHIBIT B.

Eastern Building and Loan Association.

By-laws.

ARTICLE I.

Name, Object, Location, and Duration.

SECTION 1. This association shall be known as the Eastern Building and Loan Association of Syracuse, N. Y.

SEC. 2. Its object is to afford its members a safe and profitable investment of their savings, to facilitate the purchase and improvement of real estate, and provide the advantages usually expected from savings banks and other institutions of like character.

SEC. 3. The principal place of business of this association shall be located at Syracuse, N. Y., but the branches or agencies may be located and business done in any part of the State of New York, or in any State or Territory of the United States where no legal prohibition exists, by authority of the board of directors, to be evidenced by a vote of the majority of the board, and spread upon its records.

SEC. 4. This association shall continue for forty years.

51 ARTICLE II.

Capital Stock.

SECTION 1. The capital stock of this association shall be fifty million dollars, divided into shares of one hundred dollars each.

SEC. 2. All stock shall be issued in monthly series, dated on the first day of the month of its issue. Each shareholder in good standing shall be entitled to one vote for each share of stock held by him, and on which all dues have been paid, at all meetings of the shareholders.

ARTICLE III.

Directors and Officers.

SECTION 1. There shall be elected by ballot nine directors of this association at the annual meeting thereof by a majority of the stock represented and voting.

SEC. 2. The officers of this association shall consist of president, vice-president, secretary and general manager (combined) and treasurer, to be elected by and from the board of directors. All vacancies in the board of directors caused by death, resignation or otherwise, and all vacancies from any cause, shall be filled by the board of directors until the next annual meeting of the association.

SEC. 3. The officers and directors of the association shall receive such salaries as the board of directors may deem advisable, provided the same must always be paid from the expense fund.

52 SEC. 4. All bonds to this association from any officer shall be first approved by the board of directors.

ARTICLE IV.

SECTION 1. The annual meeting of the stockholders shall be held at the home office of the association on the second Monday of May of each year commencing with the year 1891, between 2 and 4 o'clock p. m., of which due notice shall be given according to law.

ARTICLE V.

Board of Directors, Meetings, and Duties.

SECTION 1. Stated meetings of the board shall be held monthly on the first Tuesday of each month. Special meetings may be called by the secretary, or by request of two or more members of the board.

SEC. 2. It shall be the duty of the board of directors to pass upon the sufficiency of all property offered as mortgage security for loans, and attend generally to the financial affairs of the association. They shall have the management of the association not otherwise provided for in the by-laws, and the right to disburse such amounts as may be necessary to properly conduct the business of the association. They shall cause the secretary to mail to each shareholder, after each annual meeting, a general statement of the business of the preceding year and a report of the financial condition of the association, as found by them after a thorough examination. A majority of the board shall constitute a quorum for the transaction of any business.

53 ARTICLE VI.

President and Vice-President.

SECTION 1. It shall be the duty of the president to preside at all the meetings of the shareholders and of the board of directors, to

sign all certificates of stock and sign all releases of mortgages, and to perform all other duties usually appertaining to this office.

SEC. 2. The vice-president shall perform all the duties of the president in his absence. In case of any vacancy in that office he shall be *ex officio* president until the vacancy is filled.

ARTICLE VII.

Secretary and General Manager.

SECTION 1. It shall be the duty of the secretary and general manager to attend all meetings of the shareholders and board of directors; to receive all money paid into the association, and to pay the same over from time to time to the treasurer and take his receipts therefor, and keep all accounts of the association between the association and the shareholders; issue all notices; conduct all correspondence; draw and sign all orders on the treasurer, and sign all certificates of stock under the direction of the board.

SEC. 2. Whenever required by the board, he shall submit a statement in writing of the financial affairs of the association. The books of the association shall be kept by him, and at all times be subject to the inspection of the board. He shall, under the
54 direction of the board of directors, see to the settlement of all claims and bills, and shall keep insured all interest the association may have in any building or property liable to loss by fire; with the assistance of the attorney of the association, he shall protect its interests in all tax sales or forfeitures or foreclosures of property in which it may hold any interest, and for these purposes, is authorized to draw on the treasurer without further action of the board of directors, such payments to be reported at the next meeting of the board of directors. He shall receive from the attorney, after being recorded, all deeds or other documents pertaining to the business of the association, and make proper entry of the same in books kept for that purpose. He shall give bond, to be approved by the board of directors, for the benefit of the association, conditioned for the faithful performance of the duties of his office and the direction of the board of directors.

SEC. 3. It shall be his duty, as general manager, to attend to all advertising, printing and publications; look after all bonds of agents, local and special; look after all property that is offered for security and report the same to the board, and to have the general supervision over all agencies, to appoint agents, assistants and other necessary help.

ARTICLE VIII.

Treasurer.

SECTION 1. It shall be the duty of the treasurer to receive all moneys from the secretary and deposit the same in the name of the association in such bank as shall be designated by the board
55 of directors, signed by the secretary. He shall keep correct account of all moneys received and paid out by him. He

shall deposit with the trustee all abstracts of title, deeds, bonds, mortgages, contracts and other securities belonging to the association. He shall make to the board of directors, when required, a statement in writing or otherwise of the full business of his office. He shall furnish a satisfactory bond, to be approved by the board of directors, for the benefit of the association, conditioned for the faithful performance of the duties of his office, in conformity with the by-laws and the order of the board of directors.

ARTICLE IX.

Attorney.

SECTION 1. It shall be the duty of the attorney to examine all abstracts and records relating to the title of real estate offered as security for loans, and certify in writing to the board of directors all facts that might affect the interests of the association, in case such security may be accepted.

SEC. 2. He shall prepare all papers incident to making sales and securing loans by the association, cause them to be properly executed, file the same for record in the proper office of the county, and when so recorded deliver the same to the secretary, and in general do and perform all things incident to his office.

ARTICLE X.

Official Bonds.

SECTION 1. All officers holding responsible positions shall
56 execute to the association such bonds for the faithful performance of their duties as the board of directors may require.

ARTICLE XI.

Funds.

SECTION 1. The receipts of said association shall be divided into two classes, which shall be called respectively the loan fund and expense fund. The expense fund shall consist of all admission, transfer, insurance, abstract and attorney's fees, amounts paid for insurance or taxes on property on which loans have been made, fees, costs and disbursements of foreclosure, together with ten cents per share per month from the monthly payments on stock, and this fund so constituted shall be devoted to the payment of operating expenses and said insurance and taxes.

SEC. 2. The loan fund shall consist of all receipts which do not go to the expense fund, as hereinbefore provided, together with all interest, fines, earnings and accumulations from whatever source. No money can be drawn from the loan fund for any other purpose than the making of loans on security, as provided by the by-laws, and to pay amounts due withdrawing shareholders.

ARTICLE XII

Eligibility.

SECTION 1. All new shareholders elected or appointed as directors or officers of this association shall concur in and accept the previous resolutions, agreements and obligations of said association, and shall only become eligible to such position after having performed all personal obligations agreed upon prior to their election or appointment.

SEC. 2. Persons not of lawful age can only become shareholders through their lawfully appointed guardians, who shall sign the application as provided by law.

ARTICLE XIII.

Elections and Inspectors.

SECTION 1. At the stated meeting of the board of directors next preceding the day appointed for the annual meeting, there shall be elected by the board of directors three shareholders, not candidates for election, to act as inspectors thereof, who shall receive the votes, count the same, and report in writing the names of the persons having the greatest number of votes, who thereupon shall by the president be declared duly elected, whereupon the secretary shall give notice to such directors.

Any member may authorize another member by written proxy to vote his stock, provided that all proxies shall be filed with the secretary at the home office at least twenty days before the opening of the meeting at which they are to be used.

ARTICLE XIV.

Contract of Members.

SECTION 1. The terms and conditions expressed in the certificates of stock, in connection with the application for membership and the by-laws of this association, form the contract between this association and each shareholder therein.

SEC. 2. All persons desiring to become shareholders of this association must fill out, sign and deliver to the secretary an application according to the form adopted by the association, which application shall be a part of said contract with this association. Such applicant shall also pay a membership fee of one dollar per share for each and every share held by him.

SEC. 3. All loans made by this association shall be upon satisfactory note and first mortgage secured on real estate, together with fire-insurance policy in some approved company if upon improved property, and for every one hundred dollars of loan made to a shareholder, who shall in addition thereto transfer in pledge to the association one share of the stock held by said shareholder as collateral security on all loans made by the association to a shareholder. Said shareholder shall pay an interest of five per cent. per annum and a premium of five per cent. per annum on all said loans. All

interest and stock payments shall be paid on the last Saturday of each month during the continuance of said loan, and at the same time the shareholders not borrowing shall pay their monthly payments at the principal office of the association.

SEC. 4. Abstracts of title must be furnished by the borrower, also the legal examination and opinion of the attorney of this association that the title to the property offered as security is clear
59 and owned in fee-simple, and he must so report. All such abstracts, searches, and attorneys' fees, and all fees for recording, drawing and canceling mortgage are to be paid by the borrower.

SEC. 5. Borrowing members who shall neglect to pay any installments on stock and interest on their loans, as the same become due, shall pay to the association a fine of twenty cents per month on each one hundred dollars that they may have borrowed from the association. Non-borrowing members who shall neglect to pay their monthly installments promptly shall pay to the association a fine of ten cents per month on each share of stock owned by them.

SEC. 6. Should a shareholder whose property is mortgaged to the association desire to release the same by prepayment of his indebtedness, he may on application to the association, be allowed to do so by giving thirty days' notice in writing of such intention, and be allowed an equitable discount therefor, to be fixed by the board of directors.

SEC. 7. Any shareholder may have his mortgage transferred from one piece of property to another by giving thirty days' notice in writing, the shareholder to pay all expenses incurred by the transfer of the same.

SEC. 8. Any shareholder may sell or transfer property mortgaged to the association, and the purchasers must assume all stipulations, agreements, and conditions of the original mortgagor by a proper instrument in writing, to be paid for at his own expense. Said person purchasing must also purchase the shares held by said shareholder, which will be transferred on the books of the associa-
60 tion to said purchaser, all assessments or installments thereon being paid up to time of transfer upon payment of fees therefor; or the association may accept a new mortgage from said purchaser to secure the former loan, until the expiration of said loan, upon the same or other sufficient property, upon payment of all fees and expenses thereof.

SEC. 9. All deeds, notes, leases, or other written instruments requiring to be executed, and all satisfactions and releases of mortgages and other indebtedness ordered by the board of directors, shall be signed in the name of the association by the president, or in his absence by the vice-president, and countersigned by the secretary, and when necessary acknowledged by the president and secretary of the association in their official capacity, and have the corporate seal attached.

SEC. 10. If any shareholder or any person shall neglect to pay the interest or installments on his loan, or the regular monthly installments, fees, or dues for six (6) months, the secretary may compel payment of principal, interest and premiums, assessments, fees, or

dues, by proceeding on his note and mortgage, which shall at once become fully due and payable, and the association may cancel and treat as forfeited the said shareholder's shares of stock, whether deposited as collateral security or not, and all payments previously made thereon shall be forfeited to the association. Punctuality and strict performance on the part of all members, borrowers, and shareholders, in payment of fines, dues, interest, loans, and premiums, are made the essence of the contract.

61 SEC. 11. Any shareholder may pay his installments, interest, and premium in advance, or deposit with the association a certain sum to be used for such payments as they may fall due, and the association will receipt for the same and notify when said deposit is exhausted.

If members make payments in advance for a period of six months and not over two years, a discount may be allowed at the rate of seven per cent. per annum for the time each payment is actually advanced.

SEC. 12. Any shareholder who has made a loan by giving taxable property as a security shall be bound to pay all State or city or other taxes or assessments as they become due, in addition to all other payments, and his failure to do so will make his loans, notes, mortgages, premiums and interest at once fully due, and payable at the option of the board of directors.

SEC. 13. Each share of stock shall be charged with any and all amounts that may be owing from the shareholder or of his assigns, to the association, whether in dues, loans, fines, interest or premiums, and all certificates of stock in said association shall, whether mentioned therein or not, be subject to a lien thereon, to secure any such indebtedness, and the right to deduct and withhold the amount of any such indebtedness is hereby expressly reserved to the association.

SEC. 14. All shareholders shall pay or cause to be paid a monthly installment of seventy-five cents on each share named in their certificate, until the same shall be fully paid; said installment to be paid to the association on or before the last Saturday

62 of each month. Shareholders are required to pay monthly installments without notice.

SEC. 15. In case of change of residence or post-office address, name of the shareholder, or his or her legal representative, notice thereof in writing shall be given at once to the secretary of the association.

SEC. 16. All remittances for advance installments, premiums, monthly installments, fines and penalties, interest and premiums, and all other payments, shall be made to the secretary of the association at the home office, and in registered letter, express or money order or drafts. Individual checks shall not be receivable.

SEC. 17. Should the board of directors require further evidence of a claim than is given in the proof furnished on the same, it hereby reserves the right to extend the time of payment until such necessary proof is furnished and investigation is made. The association shall have sixty days after the filing of the proofs of a claim, and the approval thereof by the board of directors, in which to pay the

same, and this applies to claims maturing by death as well as to maturity of stock.

SEC. 18. If shares are withdrawn at any time before maturity, the holders thereof will be entitled to receive the amount paid into the loan fund in monthly payments; after six payments have been made on stock the holder thereof can withdraw his monthly installments that have been paid to the loan fund with interest at the rate of six per cent. per annum, seven per cent. after two years and eight per cent. after three years.

63 SEC. 19. Any shareholder wishing to withdraw his stock may be allowed to do so at any time, but the association shall not be required to pay out more than one-half of the net receipts of the monthly installments paid in that month, to withdrawing members.

SEC. 20. The association reserves the right to mature any certificate at any time after one year, and to issue a paid-up certificate of shares, payable at maturity of stock, with interest at the rate of six per cent. per annum, or at maturity of stock in pledge, payable at time of maturity of loan.

The association reserves the right to cancel any unpledged certificate after it has been in force three years, upon the payment to the owner, of the total amount of installments paid thereon, together with eight per cent. per annum as added dividend.

SEC. 21. And it is hereby expressly agreed between all shareholders and this association, that a payment of one hundred dollars per share, named in their certificate, that has been in force till maturity, shall be accepted as full payment of all claims on their certificate or against this association.

SEC. 22. Paid-up and non-assessable stock may be issued and sold at the price of fifty dollars per share, payable on date of issue. Any parties holding such paid-up stock, wanting to withdraw the same before maturity, may do so and receive six per cent. annual interest from the date of issue of said stock.

64 SEC. 23. Paid-up stock shall be indorsed by the trustee and cannot be withdrawn for one year from date of issue.

ARTICLE XV.

Loans.

SECTION 1. Each shareholder, for each share named in their certificate, shall be entitled to a loan of one hundred dollars from the association, provided they shall first make application for such a loan upon a blank furnished by the association for that purpose, if the condition of the loan fund in the treasury shall warrant it. All applications for loans shall be filed and numbered consecutively as received, and be examined and approved, or rejected, by the board in their regular order.

SEC. 2. All shares must be in force three months before said shareholder shall be entitled to a loan. All applications for loans are part of the contract of the shareholders with this association. Nothing herein contained shall prevent the board of directors from

loaning funds of the association to any member in greater sums than the above, provided upon approved securities.

ARTICLE XVI.

Local Boards.

SECTION 1. Whenever sufficient stock has been sold in any town to make it advisable, the members residing in each town may organize a local board or branch of the association. The officers of the local organization shall consist of a board of from five to nine directors, from whose number shall be elected a president, secretary and treasurer (combined), and attorney; all of whom must be shareholders in the association; these officers shall hold office one year and until their successors are elected.

SEC. 2. The traveling agents of the association are given authority to appoint the first officers of the local board. Provided, however, that officers so appointed shall only hold office until the members of the local board meet and elect their successors.

SEC. 3. It shall be the duty of the officers of the local board to pass on all applications for loans which are received by the association from members residing in the town where such local board is located, and to protect the interest of the association in all practicable ways.

SEC. 4. Members may, if they so desire, make monthly payments on stock to the local treasurer. But such local treasurer shall be deemed to be the agent of the members and not of the association.

SEC. 5. As soon as the officers of the local board have been appointed or elected and the names of such officers have been certified to the association by a traveling agent or by the local secretary, a local-board charter shall be issued to such board.

SEC. 6. The president of the local board shall call a meeting thereof whenever three members shall request him to do so.

ARTICLE XVII.

By-laws—Amendment.

SECTION 1. No amendment shall be made to these by-laws unless previously indorsed by resolution of the board of directors and adopted by a majority vote of the stock of said corporation.

EXHIBIT C.

This indenture, made this first day of May in the year of our Lord one thousand eight hundred and ninety-one, between Lawrence S. Welling and Marion Bonnoitt of Darlington, S. C., of the first part, and the Eastern Building and Loan Association of Syracuse, N. Y., a body corporate, party of the second part:

Witnesseth, that the said parties of the first part, in consideration of the sum of five thousand dollars, to them duly paid, the receipt whereof is hereby acknowledged, have sold, and by these presents

do grant and convey to the said party of the second part, its successors and assigns, all that tract or parcel of land situate in the town of Darlington, county of Darlington, and State of South Carolina.

Description of Property.

With the appurtenances, and all the estate, title and interest therein of the said parties of the first part; and the said Lawrence S. Welling and Marion Bonnoitt do hereby covenant and agree to and with the party of the second part, its successors and assigns, that at the time of the ensealing and delivery of these presents they are the lawful owners and are well seized in fee simple
67 of the premises above conveyed, free and clear of all incumbrances, of every name and nature, legal or equitable; and that the premises thus conveyed in the quiet and peaceable possession of the said party of the second part, its successors and assigns, they will forever warrant and defend against any person whomsoever lawfully claiming the same, or any part thereof.

This grant is intended as a security for the payment of the sum of sixty-one hundred seventy-seven and $\frac{60}{100}$ dollars, the same being the principal, interest and premium of a loan from said association, which said loan was made pursuant to and accepted under the provisions of the by-laws of said association, and which said by-laws have been read by the mortgagors and are hereby made a part of this contract, which said loan is evidenced and secured to be paid by seventy-eight (78) certain promissory notes of even date herewith executed by the said Lawrence S. Welling and Marion Bonnoitt, payable to the said association, at its office in Syracuse, as follows: One of each of said notes is to be paid on or before the last Saturday of each and every month until all of the seventy-eight notes are fully paid, together with interest on each of said notes after maturity at the rate of six (6) per cent. per annum payable semi-annually until said notes are fully paid.

And the said mortgagors for themselves and their heirs, executors, administrators and assigns, hereby covenant and agree with the party of the second part, its successors and assigns, to pay said principal, interest and premiums at maturity and the interest ac-
68 cruing on said notes after maturity, and all fines and penalties that may be imposed pursuant to the provisions of the constitution and by-laws of said association, and also keep and perform all promises and engagements made and entered into with said association according to the true intent and meaning of its by-laws and articles of association; also to keep the buildings erected and to be erected upon said premises insured against loss or damage by fire in an amount not less than three thousand dollars, in such manner and in such company as shall be most satisfactory to the party of the second part, its successors or assigns, so that the loss or losses, if any, shall be payable to it or them, and from time to time when taken out issued on said premises, which policies shall contain the best and most approved form of mortgagee clause, and at once make due proofs in case of loss, and do all other things required, deliver over to it or them all policies and renewals thereof,

by said policies; and also pay and discharge when due and payable all taxes, assessments, rates and other charges, now or hereafter levied or assessed upon said premises, and remove all adverse claims, clouds and encumbrances, also that, until full payment of the money hereby secured, nothing shall be done or suffered whereby said premises shall be diminished in value, or any of said policies of insurance affected or vitiated. In case default shall be made in effecting such insurance, or paying, discharging or removing such taxes, assessments, rates, other charges, adverse claims, clouds or encumbrances as aforesaid, it shall be lawful for said second party, its successors or assigns, to effect such insurance and pay such taxes, assessments, rates, other charges, adverse claims, clouds or
69 encumbrances, and the amount so paid shall be a lien on said premises added to the amount secured by these presents and forthwith due and payable without demand with interest, and may be collected in the same manner as the principal sum hereby secured.

And it is hereby expressly agreed, by and between the parties to these presents, that if default be made in the payment of any one of said notes, or any part thereof, as herein provided, or in case of waste, or non-payment of taxes, assessments, or impositions on said premises or in case of neglect or refusal to keep the premises insured, as herein provided, or in case the improvements thereon shall not be kept in good order or repair, or in case of a breach of any of the covenants or agreements contained herein, or in case of a failure to duly observe and keep the by-laws of the said association, and in either or any of such cases, the whole of the said principal sum, interest, premiums, fines, dues and costs, shall at once become due and payable at the option of said association, its successors or assigns; and it shall be lawful for said association, or its successors or assigns, at any time thereafter to sell the premises hereby granted; or any part thereof, in the manner prescribed by law, and out of all moneys arising from such sale, to retain the amount due and unpaid for principal, interest, premiums, fines, dues and costs thereof, taxes, assessments, impositions, insurance and other advances, together with the costs and charges of making such sale, and the overplus, if any there be, shall be paid by the party making such sale, on demand to the said Lawrence S. Welling and Marion Bonnoitt or their heirs or assigns.

70 And this conveyance shall be void if full payment of the aforesaid moneys, both principals and interest, be made as hereinbefore specified and if the aforesaid covenants and each of them be well and truly kept and performed as herein specified and provided.

In witness whereof, the parties of the first part have hereunto set their hands and seals the day and year first above written.

LAWRENCE S. WELLING. [L. S.]
MARION BONNOITT. [L. S.]

Sealed and delivered in the presence of—
D. M. SMOOT.
E. O. WOODS.

Probated.

EXHIBIT C 1.

A Copy of the Seventy-five Notes for Seventy-nine and $\frac{20}{100}$ Dollars.

No. —.

On or before the last Saturday of August, 1891, I promise to pay seventy-nine and $\frac{20}{100}$ dollars $79.20 to the order of the Eastern Building and Loan Association at its office in Syracuse, N. Y.
Value received.

LAWRENCE S. WELLING.
MARION BONNOITT.

Darlington, S. C., May 1st, 1891.

71 EXHIBIT C 2.

A Copy of the Last Three Maturing Notes for $41.70.

No. —.

On or before the last Saturday of August, 1897, I promise to pay forty-one and $\frac{70}{100}$ dollars $41.70 to the order of the Eastern Building and Loan Association at its office in Syracuse, N. Y.
Value received.

LAWRENCE S. WELLING.
MARION BONNOITT.

Darlington, S. C., May 1st, 1891.

EXHIBIT D.

The Definite Contract Plan.

Eastern Building and Loan Association of Syracuse, N. Y.

Authorized capital, $50,000,00.00.

Incorporated under the laws of the State of New York, under the supervision of the New York State banking department.
Home office: N. W. cor. Salina and Fayette Sts.
Depository: Trust & Deposit Co., of Onondaga.
New York correspondent: Hanover national bank.

72 Eastern Building and Loan Association of Syracuse, N. Y.

America's leading building association.

Officers and directors:

H. H. Loomis, president, capitalist.
D. H. Murray, vice-president, physician and surgeon.
Jno. J. W. Reynolds, sec'y and gen'l manager, building and loan.
Lucius M. Kinne, treasurer, paying teller Trust & Deposit Co. of Onondaga.

W. S. Emery, assistant secretary, formerly m'g'r Syracuse Cabinet Co.

M. H. Bunn, ass't gen'l manager, building and loan.

Chas. A. Pooler, sup't of agencies, building and loan.

Alex. H. Hubbs, manager loan department, formerly real estate.

A. B. Kinne, director, physician and surgeon.

D. A. Pierce, attorney.

Every dollar loaned on first mortgage on inside, improved real estate.

No idle money.

Interest compounded monthly.

Officers and agents bonded. Amount of bonds Dec. 1st, 1891, $703,850.00.

73 Building associations are no longer an experiment. The insolvency of a building association is an unknown occurrence. They commend themselves to every community because they furnish the best facilities for borrowing money and, at the same time, retain the benefits of the interest otherwise paid to distant capitalist-, while not the least of the benefits which such organizations confer are the habits of saving which they engender and promote. We feel warranted in saying that no system of investment known in this country has proven to be so universally satisfactory to all concerned as the building and loan system. The system herein presented places the poor man's monthly savings on an equality with the millionaire's surplus, and thereby enables one dollar to earn as much singly as if it were a part of thousands. It affords its shareholders all the advantages of the accumulations of small or large sums of money at more than compound interest, besides being a substantial investment secured by real-estate mortgages. It affords every man the advantage of becoming the owner of his own fireside, and feeling that there is one place on earth he can call "home." Every man struggles to provide a home for his family, and it is his aim to become the owner of it in the shortest possible time.

For the instruction of the reader we here submit a short catechism:

Q. What is the Eastern Building and Loan Association?

74 A. It is in the nature of a co-operative bank, in which the members are equal partners and the deposits are loaned only to the shareholders.

Q. How are deposits made and regulated?

A. Deposits are small monthly instalments on shares, paid to the association, and are practically compulsory under the by-laws.

Q. How often are the profits divided?

A. Only when stock matures and reaches its par value.

Q. What is the meaning of stock maturing?

A. When the amount deposited, together with accumulated profits, amounts to one hundred dollars on each share.

Q. What amount is deposited monthly?

A. Seventy-five cents per share.

Q. How many shares can each member hold?
A. Two or more shares.
Q. Can women hold shares?
A. Yes.
Q. When will the shares reach their par value?
A. Shares mature in exactly six and a half years.
Q. How much will a member have to pay in altogether?
A. On a basis of ten shares (one thousand dollars maturity value) he will have paid in five hundred and ninety-five dollars ($595) and receives one thousand dollars.
Q. And does a stockholder have to wait until maturity before he can draw his profits?
75 A. He does, unless he wishes to withdraw entirely, in which event his money is refunded with an equitable amount of dividend added.
Q. When can he withdraw?
A. He can withdraw at any time by giving thirty days' notice of such intention.
Q. Is the stock transferable?
A. It can be transferred at any time.
Q. How is money loaned?
A. On first-mortgage real-estate security, invariably, appraised by members of the local board where the loan is made, who, being investors, are directly interested in the securities. (See page 12.)
Q. How is the priority as to borrowing decided?
A. Borrowing members take their turn in receiving money in the same order as the applications are received.
Q. Are there any penalties for delinquencies in making payment?
A. There are. Members in arrears are fined ten cents per share per month, which amount they must pay, together with back dues, to keep their shares in force.
Q. What is the object of this association?
A. The main object is to assist each other in saving money, and having what that money earns.
Q. What is the cost of joining this association?
A. The admission fee is one dollar a share, which is paid but once.
Q. Are there any extra assessments?
A. There are none and can be none.
76 Q. Are there any other charges?
A. There are none except for fines, and no one need be fined if he is punctual in paying his installments.

Plan.

The capital stock of the Eastern Building and Loan Association is divided into shares of $100 each, par value at maturity. Any person, male or female, may become a shareholder, and may apply for two or more shares. All shares on which payments are made are regularly matured at the expiration of seventy-eight months (six and one-half years) from date of certificate.

Membership Fee.

Membership fee for each and every share (installment stock) is one dollar per share, and must be paid to the agent when application is made.

Monthly Installments.

Monthly installments are seventy-five cents on each one-hundred-dollar share; first installment due on or before last Saturday of the month in which the certificate is dated, and must be sent to the home office or paid to the local-board treasurer, or a legally authorized collecting agent, on or before the last Saturday in each month, without notice.

Fines.

If monthly installments are not paid when due a fine of ten cents a share is fixed as a penalty for each month the payment is delinquent, but no share can be retired unless it has been in arrears six months. All fines go to the loan fund, as profits to members.

77 *Loans.*

The money accumulated in the loan fund is loaned to the first approved application from a member. Loans can be made only to members. All loans must be amply secured by first-mortgage real-estate security. Loans will only be made upon shares that are three months old, and in good standing. For illustration—suppose a party owns a town lot worth four hundred dollars or upwards, and after he becomes a shareholder desires to borrow one thousand dollars with which to build a home, and he has ten shares of one hundred dollars each, amounting to one thousand dollars. When the shares are three months old or more, he can make application for a loan on blanks furnished by the association, which he fills out, offering a first mortgage on his lot and the improvements to be made thereon with the money so borrowed. If the association, through its directors, on inspecting his application, finds that the security offered is sufficient, and that all is as represented and all the requirements have been complied with, his application will be approved, and he will be entitled to the next loan; but, should there be several ahead of him, he will take his regular turn, as all applications for loans are taken up in their regular order.

All interest and premiums are payable monthly at the time of paying monthly instalments.

This association has no auction system, whereby some members are inveigled into paying large premiums, but all members pay alike for money borrowed and take their regular turns in receiving loans.

78 *Illustration.*

Showing costs and profits to the investor of ten shares of $1,000 in six and one-half years, at time of maturity:

He pays a membership fee of $1.00 per share	$10.00
He pays monthly instalments of $7.50 per month for 78 months, $7.50 x 78	585.00
Total amount invested	595.00
He receives in cash at maturity	1,000.00
His net gain is	$405.00

Illustration.

Showing the cost of $1,000 loan on ten shares of stock for six and one-half years:

He bids ten per cent. ($100), which is deducted from the $1,000 borrowed	
He pays $15.84 per month for 78 months	$1,235.52
He paid for stock	10.00
Total	$1,245.52

It will be seen from the above that $345.52 is the amount paid in excess of the actual amount received on loan. This for the use of the money for six and one-half years. Thus the borrower pays less than six per cent. per annum.

He also pays $10 attorney's fees for examining title.

79 *How to Remit.*

Remittances can be sent to the secretary at the home office by express order, post-office order, draft, or express, and the secretary will receipt for the same by return mail, or they can be paid to local board treasurer. Any shareholder desiring to pay his monthly instalments semi-annually in advance can do so, and will receive a discount of five per cent. per annum on the money for the time actually advanced, and in this way avoid fines through forgetting and allowing the date of payment to pass.

Assignment of Shares.

Any member may sell and assign his shares by filling out the assignment on the back of his certificate (having his signature witnessed) and forwarding to the home office with two dollars for approval and transfer on the books of the association. The assignee thereof shall be entitled to the same benefits as the original holder of the certificate. Shares cannot be assigned unless square upon the books of the association to date of assignment. No assignment of shares will be valid unless the approval of the secretary is endorsed thereon.

Withdrawal of Shares.

See inside of back cover.

Loans without Real-estate Security.

After shares have been in force a year the holder may obtain a loan on them without other security than the pledging of
80 his shares to the association as collateral, but not to exceed ninety per cent. of their pass-book value. This will enable members who own no real estate to obtain small loans from time to time without paying the exorbitant interest charged by note brokers. No legal fees are charged upon this class of loans.

Paid-up Stock.

Paid-up stock is issued and sold at the price of fifty dollars ($50) per share, payable on date of issue. Parties holding such paid-up stock, wanting to withdraw the same before maturity may do so after certificate has been in force one year, and receive six per cent. annual dividend from the date of issue to date of withdrawal.

This association issues fully-paid certificates at $100 per share, on which the holder receives seven per cent. dividend. Dividend paid quarterly.

(For full particulars regarding paid-up stock and fully-paid certificates, see form No. 79.)

Local Boards.

Whenever sufficient stock has been sold in any town to make it advisable, the members residing in such town may organize a local board or branch of the association.

The officers of the local board shall consist of from five to nine directors who must be shareholders, from whom shall be elected the president, vice-president, secretary and treasurer (combined), and attorney.

The authorized agents of the association have the authority to appoint the first officers of the local board, provided, however,
81 that such appointees shall only hold office until their successors are elected by the members.

A local-board charter will be issued to said board as soon as the agent shall certify to such election or appointment.

Every thoughtful and intelligent man will appreciate the importance of the following arrangement for handling the funds:

The trustee shall receive from the treasurer each month all mortgages, bonds and securities belonging to the association.

The secretary is required to deposit all funds in the hands of the treasurer, and he to deposit the same in the depository of this association.

No money can be withdrawn from the treasury for any purpose except by a check signed by the secretary and countersigned by the treasurer, upon an order stating the purpose for which such money

is drawn; such order to be signed by the chairman of the executive committee, as authorized by the board of directors. (Extract from resolutions adopted March 4, 1890.)

This renders extravagance, mismanagement and dishonesty on the part of the managers and agents of this association impossible.

Special Notice.

No agent has power to waive or alter any of the conditions or terms expressed in the certificate of shares or to make any
82 statements other than embraced in the printed literature; and, further, the asciation will not be responsible for any bills contracted by any person claiming to be a representative of this association, or for any monies collected (except membership fees on installment shares), unless explicit authority is given him by the secretary and general manager, which he will have in writing.

Agents or representatives have no authority to promise loans as to time or amount.

For ready reference we submit the following schedule:

Number of shares.	Monthly instalments due on or before the last Saturday of each month.	Maturity value of shares at end of 6¼ years.	Total amount of instalments paid in 6¼ years.	Shares.	Monthly payments by borrower which pay up loan and interest in 6¼ years.
2	$1.50	$200	$117	2	$3.17
3	2.25	300	175.50	3	4.75
4	3.00	400	234	4	6.34
5	3.75	500	292.50	5	7.92
10	7.50	1,000	585	10	15.84
20	15.00	2,000	1,170	20	31.68
30	22.50	3,000	1,755	30	47.52
40	30.00	4,000	2,340	40	63.36
50	37.50	5,000	2,925	50	79.50
100	75.00	10,000	5,850	100	158.40

For further information regarding the details or the workings of the association, call on or address

JNO. J. W. REYNOLDS,
Secretary and General Manager, Syracuse, N. Y.

83 This is what appears on inside of back cover:

The all-important feature. Practiced only by the "eastern" call withdrawals.

Any shareholder may withdraw his monthly instalments paid to the association at any time, provided no payments of fines are due and unpaid, by his giving thirty days' notice, and will receive 6 per cent. dividend on all stock of six months' standing up to two years: the third year 7 per cent.; any time after the third year and before maturity 8 per cent. Withdrawals payable only at the home office.

The withdrawal feature is an all-important question to the would-

be investor. The plan as originated and in use by the "Eastern" is the only equitable one, inasmuch as it does not discriminate against the poorer class, or those unfortunates, who, because of sickness, loss of position or otherwise, are liable at any time to become unable to keep up their monthly instalments. It is only the wealthy who can place their money beyond their reach, for a term of years, consequently under the forfeiture system in use by other companies, it is this class who receive the benefit at the expense of the less fortunate.

No other restrictions imposed.

This is what appears on back of cover:

The only association making a contract definite in every particular.

84 Withdrawal value clearly stated and never less than the amount paid in instalments.

Stock matures in 78 months.

Borrowers know the exact amount required to cancel their mortgage.

No auction system, no lapses, no forfeitures.

No loans made on farm property, churches, schools, summer hotels or resorts, mills, factories or any property designed for other than general purposes.

EXHIBIT E.

Supt.	Cashier.	Stock. 2 | 3 | 91	Recorded.	Indexed.	Filed.	Mailed.

50 shares. Number 496.

Application for Shares in the Eastern Building and Loan Association of Syracuse, N. Y.

Agent, Samuel Carpenter, general agent.

I, Welling & Bonnoitt, of Darlington, county of Darlington, State
Name. Town. County.
of South Carolina, No. of street or P. O. box, ——, occupation, hard-
State. Street No. or box.
ware merchants, hereby apply for membership in the Eastern

85 Building and Loan Association of Syracuse, Onondaga county, New York, and subscribe for fifty shares of regular stock.

I hereby agree to abide by all the terms, conditions, and by-laws contained or referred to in the certificate of shares, and will also comply with all the rules and regulations of said association. And do also hereby, in order to facilitate the transaction of business of the Eastern Building and Loan Association of Syracuse, N. Y., make, constitute, and appoint the secretary of said association, for me in my name, place and stead, to appear and vote as my proxy upon any and all shares of stock, at any time, held by me, or standing in my name in said association during my absence, at any and all

meetings of stockholders or directors, and upon any and all matters which may properly come before any such meeting, and attorneys, one or more under him, from time to time in writing to appoint, hereby authorizing, ratifying, and confirming all that my said attorney, or his substitute, may do or cause to be done as such proxy by virtue hereof.

This proxy is not in any manner to affect my right to vote on all such stock whenever I am personally present at any stockholders' meeting.

In witness whereof I have hereunto set my hand and affixed my seal this 28th day of January, A. D. 1891.

Signature of applicant:

WELLING & BONNOITT, [SEAL.]

SAMUEL CARPENTER, *Witness.*

The price of stock must accompany this application.

86 EXHIBIT F.

Copy of Certificate of Shares.

Series No. B–2. Maturing Aug. 1st, 1897.

Eastern Building & Loan Association of Syracuse, N. Y.

Certificate number. Number of shares. Amount.

This certifies that Welling & Bonnoitt of Darlington, county of Darlington, and State of So. Carolina, are hereby constituted shareholders of the Eastern Building & Loan Association of Syracuse, N. Y., incorporated under the laws of the State of New York, and holds ten shares therein of one hundred dollars each, and in consideration of the membership fee, together with agreements and statements contained in the application for membership in the association, and full compliance with the terms, conditions, and by-laws printed on the front and back of the certificate, which are hereby referred to and made a part of this contract, and the said Eastern Building & Loan Association of Syracuse, N. Y., agree to pay said shareholders or their heirs, executors, administrators, or assigns, the sum
87 of one hundred dollars for each of said shares at the end of seventy-eight months from the date thereof, or in case of their death prior to the expiration of seventy-eight months, the association will pay the sum of all monthly installments paid on this certificate, with interest at 6 per cent. per annum, payable in the manner and upon the conditions set forth in said terms, conditions, and by-laws hereto attached. All payments under this certificate are payable at home office of the association, at Syracuse, New York, within sixty days after the acceptance and approval of satisfactory proofs. This certificate of shares is issued to and accepted by the holder thereof upon the following express terms and conditions:

First. The shareholder agrees to pay, or cause to be paid, a

monthly installment of seventy-five cents on each share named in this contract, the same to be paid on or before the last Saturday of each month until such share matures or is withdrawn.

Second. If the shareholder shall fail to pay, or cause to be paid, any monthly installment on or before the last Saturday in each month, he shall pay a fine of ten cents per share for each and every month the payment may be in arrears.

Third. Stock in this association is non-forfeitable; but if a monthly payment on any share becomes past due and payable for a period of six months or more, such share shall be sold at auction for the purpose of paying the arrearages. The proceeds of the sale shall first be used to pay all back monthly payments and fines; the balance remaining after paying all accrued
88 fines and monthly payments shall be paid to the member in whose name the stock stands at the time of the sale. If the stock brings no more than enough to pay the accrued fines and monthly payments it shall be bid in by the association and canceled, and the amount standing to the credit thereof in the loan fund shall be divided among the other shares as profits.

Fourth. Any member may withdraw their monthly instalments at any time by first giving thirty days' notice, and will receive 6 per cent. annual interest on all shares of six months' standing and up to two years; the third year 7 per cent.; any time after the third year and before maturity 8 per cent.

Fifth. If a shareholder dies his personal representatives may withdraw his shares at any time, or to continue on to maturity.

Sixth. At stated periods the profits arising from interest, premiums, fines, and other sources shall be apportioned among the shares in good standing.

Seventh. All payments must be paid to an authorized agent, or sent to the secretary at the home office by draft, express or money order, or registered letter. Individual drafts or checks not receivable.

Eighth. The association reserves the right at any time to make an investigation in all cases prior to the approval of claims.

Ninth. The by-laws of this association, which are attached to and indorsed herein, are a part of this contract, and such by-laws
89 and this certificate are to be construed together as part of the contract between the association and the shareholder.

Tenth. No shares shall be assignable or transferable on the books of the association, except by the shareholder paying a transfer fee of two dollars for entering the same, and upon consent of the association, indorsed thereon by the secretary, after all dues and claims on the same have been paid.

Eleventh. It is agreed by all shareholders of this association that desire loans, that all money in the loan fund shall be sold at a uniform rate of ten per cent., bid as premiums on all loans.

Twelfth. No shareholder shall have any claim to any interest in the affairs, assets or funds of this association, nor the control of them, except as above specifically set forth, and assumes no further liability of any kind whatsoever, except as hereinafter described.

Thirteenth. In every case where this contract shall cease and determine, or become null and void, then all payments made thereon, shall become forfeited to the association.

Fourteenth. Any action brought against this association shall be commenced within six months after filing proofs, and in the county of Onondaga and State of New York.

Fifteenth. No agent has authority to change this contract in any way, and the association assumes no obligation for any statements not contained in its printed literature.

90 Given under the seal of said association, at Syracuse, New York, this second day of Feb'y, A. D. 1891.

JNO. J. W. REYNOLDS,
Secretary and Gen'l Manager.

[L. S.] H. H. LOOMIS, *President.*

The following is found on back of certificate:

The within-mentioned shares of stock in the Eastern Building and Loan Association of Syracuse, N. Y., are hereby withdrawn, and I have this day received the sum of one thousand dollars in full of the amount due me by reason of such withdrawal.

Dated at Darlington, S. C., May 1st, 1891.

LAWRENCE S. WELLING. [L. S.]
MARION BONNOITT.

Witness:
E. O. WOODS.

EXHIBIT G.

Application for Loan from the Eastern Building and Loan Association of Syracuse, N. Y.

We do hereby make application for a loan of five thousand dollars, for six and a half years, to bear interest at the rate of
91 five per cent. per annum, and a premium of five per cent. per annum, payable on or before the last Saturday of each month; all payments to be paid at such place as the lender may direct; and to secure the same we agree to give a mortgage on the real estate set forth in the following questions and answers:

Here follows description of property.

If this application is accepted, I will furnish at my own expense a complete abstract of title to the land proposed as security, and have the same certified to be correct by the proper county officers, which shall be brought down to a date subsequent to the filing of the instrument securing my loan, and show a clear and perfect title in the mortgagors. Also attorney's search and pay expenses of examination and appraisement of the property, and pay for recording the mortgage or trust deed, and I further agree to forward with said paper ten dollars ($10) to pay the attorney of the association for making the examination of the same. I also agree to furnish the mortgagee each year during the continuance of said loan with

evidence that all taxes and other assessments against said property have been paid. I also agree to keep the property insured for $3,000.00 in favor of the mortgagee and to bid a premium of ten per cent. upon loan.

Dated at Darlington, So. Ca., this 6th day of April, 1891.

(Signed) L. S. WELLING,
For Welling & Bonnoitt.
M. BONNOITT,
For Welling & Bonnoitt.

92 EXHIBIT H.

AUGUST 23D, 1897.

The Eastern Building and Loan Association, Syracuse, N. Y.

GENTLEMEN: We send you prepaid by express this day forty-one and $\frac{70}{100}$ dollars ($41.70). This money to pay our note due you on or before the last Saturday in August, 1897. Please send us our note upon receipt of money.

Very resp'ct'y, WELLING & BONNOITT.

EXHIBIT I.

SYRACUSE, N. Y., *August* 28, 1897.

Messrs. Welling & Bonnoitt, Darlington, S. C.

GENTLEMEN: Your remittance of $41.70 by express was duly received and the same has been credited to the account of your loan. The amount, however, is not sufficient to meet the entire payment due from you the last Saturday of this month owing to the fact that the shares will not mature in the estimated period of seventy-eight months. In the early history of the association it was thought that the monthly payment of 75 cents per share loaned out under the then existing plan would mature shares in seventy-eight months, but our experience has been such as to clearly demonstrate the impossibility of so doing. The four years of depression
93 through which the country has passed was not anticipated at that time, but even under the most favorable conditions with all branches of business prosperous thereby placing every borrower in the best position possible to favor his meeting the payments as they became due, it is quite questionable whether the earnings would have produced the anticipated result.

When the financial statement was taken from our books early in January of this year, we found that the past year had made great inroads into the profit account of the association, and that the book value of shares was considerably less than they had been supposed to be until the figures were ascertained. Immediately thereafter the management considered ways and means of managing the affairs of the association with a view of meeting the existing conditions in a manner that would bring about the best result to every person interested. The proceedings of the annual meeting, a copy of which was sent every shareholder, sets forth the views and actions of the membership upon that occasion. It doubtless is a disap-

pointment to every shareholder to be told that his shares are not worth as much when seventy-eight months old as they anticipated, but every shareholder, being a copartner in the affairs of the association, can realize no more for their investment than the business has yielded. The undivided profit account at that date was ascertained and set apart for the benefit of existing shares, and the experience of the association since has been to enhance the value of the shares and in addition thereto losses aggregating quite a number of thousand dollars have been provided for from the current earnings of the association.

94 If your shares had reached the maturity value of $100.00 each the amount remitted by you would be sufficient to meet in full the payment due today, but as the shares have not matured owing to reasons above given, it becomes necessary for you to continue the regular full payments upon your loan amounting to $79.20 each; having paid $41.70 for this month there is still a balance of $37.50 due as of this date, which under the circumstances you may remit direct to this office without including any fine thereon.

Yours very truly,

M. H. BUNN,
Mgr. Loan Dept.

EXHIBIT J.

SEPT. 1ST, 1897.

The Eastern Building & Loan Association.

GENTS: We enclose receipt sent us for money sent you by us per prepaid express on August 23rd, 1897. You will see by our letter of that date that we sent you the money for a specific purpose, namely, to pay our note due you on or before the last Saturday in August, 1897. Now we make this demand on you, that you apply the money for the purpose sent, and forward us our note at once.

Very respect'y, WELLING & BONNOITT.

95 EXHIBIT K.

SYRACUSE, N. Y., *September* 8, 1897.

Welling & Bonnoitt, Darlington, S. C.

GENTLEMEN: Your favor of the 1st inst. at hand. You have already been advised what it will be necessary for you to do relative to payments upon your loan, the matter being fully explained in my letter of August 28th. As heretofore stated and as shown in the receipt sent you, your remittance by express has been applied upon your loan which is the only disposition that can be made of the same. If this is not satisfactory to you upon your request the money will be refunded. It cannot be accepted as settlement in full of the payment due the last Saturday in August for reasons heretofore given.

Yours very truly,

M. H. BUNN,
Mgr. Loan Dept.

EXHIBIT L.

SEPT. 17, '97.

The Eastern Building and Loan Association, Syracuse, N. Y.

GENTLEMEN: Yours of the 8th inst. to hand, contents noted. Our note for $41.70 was due you the last Saturday in August. We sent you the amount and specifically directed you to apply same to the payment of the note, you have received the money and under
96 the law are obliged to apply it as directed. We therefore protest against the attempted application of the $41.70 to any other supposed or alleged account other than to the payment of the note. We deny that we owe you upon any other account than as represented by the note, and therefore demand of you the cancellation and surrender of our note for which we have remitted and you have received payment.

Yours truly, WELLING & BONNOITT.

EXHIBIT M.

SYRACUSE, N. Y., *September* 22, 1897.

Welling & Bonnoitt, Darlington, S. C.

GENTLEMEN: Your favor of the 17th inst. at hand. The remittance made by express amounting to $41.70 cannot be accepted in full of the payment due from you to this association upon the last Saturday in August as has heretofore been stated to you. You were advised in my letter of the 8th inst. that if the application of the amount was not satisfactory to you the money would be refunded. As your letter just received expresses dissatisfaction, I enclose herewith draft on New York for the amount. Each monthly payment due from you upon the loan amounts to $79.20 provided the same is paid in time to avoid fines. Under the circumstances, if you see fit to remit at once, the amount named to meet the August
97 payment, the same will be accepted without any fine. A like amount is also due the last Saturday of this and each succeeding month until further notice.

Yours very truly, M. H. BUNN,
Mgr. Loan Dept.

EXHIBIT N.

SEPT. 22, '97.

The Eastern Building and Loan Association, Syracuse, N. Y.

GENTLEMEN: Enclosed find $50.04. We send you this to retire note of Welling & Bonnoitt for $41.70 and A. W. Welling $8.34 due on or before last Saturday in September, and ask that you credit it in that way and return our notes cancelled.

Yours truly, WELLING & BONNOITT.

EXHIBIT O.

SYRACUSE, N. Y., *September* 25, 1897.

Messrs. Welling & Bonnoitt, Darlington, S. C.

GENTLEMEN: Your favor of September 22nd enclosed in an express envelope containing $50.04 which you request to be
98 applied for the purpose of retiring the September note on loan No. 105, Welling & Bonnoitt, $41.70 and on loan No. 253, A. W. Welling, $8.34 is hereby acknowledged. Replying thereto beg to say that we cannot accept these amounts in settlement of the payment falling due the last Saturday of September on either of these loans. The several amounts have been credited to the respective loans. If this is not satisfactory the same will be refunded upon your request to do so. The amount due this day upon the Welling & Bonnoitt loan is $79.20 and upon the A. W. Welling loan the amount is $15.84 and no lesser sum will be received by this association in settlement of the amounts due this date. Partial payments can, under no circumstances, be accepted or allowed.

Yours very truly,

M. H. BUNN,
Mgr. Loan Dept.

EXHIBIT P.

SEPTEMBER 28, '97.

Eastern Building and Loan Ass., Syracuse, N. Y.

GENTLEMEN: Enclosed we send you $41.70 to take up our note due on or before last Saturday in October, also $8.34 for A. W. Welling for his note due at the same time as ours, in addition send satisfaction of the respective mortgages that were given to secure said notes. That being the entire balance due you on both
99 mortgages, we in addition enclose you $1.00, being 50c. each to have satisfaction probated.

Hoping that you will return notes and mortgages with enclosed satisfaction executed as requested at an early date.

Yours truly,

WELLING & BONNOITT.

EXHIBIT Q.

SEPTEMBER 30, 1897.

The Eastern Building and Loan Association, Syracuse, N. Y.

GENTLEMEN: Your favor of 22d inclosing your draft on Bank of Syracuse for $41.70 received. We return your draft herewith, as we have no right to it. Your favor of 25th inst. also received, and we beg to say in reply that we instructed you in our letter of 25th inst. what to do with the money.

Yours truly,

WELLING & BONNOITT.

EXHIBIT R.

SYRACUSE, N. Y., *November* 24, 1897.

Welling & Bonnoitt, Darlington, S. C.

GENTLEMEN: We are advised that you refuse to receive the
100 express package forwarded you by me November 3rd. I desire to call your attention to the letter which was enclosed therein, which reads as follows: "Enclosed herewith find the remittance recently made by you amounting to $51.04, being the same bills and stamps enclosed by yourselves with the intention that $41.70 of the amount should be applied upon the loan of Welling & Bonnoitt, No. 105, and $8.34 on loan of A. W. Welling, No. 253. We cannot accept the amounts for the purposes tendered, for reasons which have already been explained.

I also enclose a New York draft payable to your order for $8.34, this amount, together with $41.70, having been forwarded by you the 22d of September, and by oversight the entire remittance, amounting to $50.04, was credited to loan No. 105, Welling & Bonnoitt upon our ledger. The above being forwarded to you by express, charges prepaid.

Yours very truly, M. H. BUNN,
Mgr. Loan Dept.

P. S.—I neglected to state that $1.00 of the above-mentioned $51.04 was for the purpose of procuring satisfaction of the mortgages.".

Yours very truly, M. H. BUNN,
Mgr. Loan Dept.

101 *Defense.*

The defendant submits a motion for nonsuit on the ground that there is no evidence that the mortgage was paid according to the terms and provisions of the by-laws of the association and according to the laws of the State of New York, that this contract is to be construed according to the laws of New York, and there is no evidence before the court showing what the laws of New York are; further upon all the evidence or proof in the case there is nothing to show a compliance and payment with the terms of the contract; and further that the only evidence of compliance with the contract is that seventy-five notes were paid and three others offered to be paid, and that the premises were kept insured and fines paid.

The motion was refused. Defendant excepts.

Defendant's Testimony.

The deposition *de bene esse* of C. A. Pooler was introduced and read to the jury.

C. A. POOLER, being duly sworn, deposeth and saith in answer to interrogatories as follows:

By COUNSEL FOR DEFENDANT:

Q. 1. Where do you reside, and what is your business?

Ans. In the city of Syracuse, N. Y.; I am director and secretary & general manager of the Eastern Building & Loan Association.

Q. 2. How long have you been secretary, general manager and a director?

102 A. Secretary since March 1st, 1897; general manager since May 1st, 1894, and director since March 1st, 1890.

Q. 3. Prior to May, 1894, were you connected with the defendant association in any other capacity than as director, and if so in what capacity and how long?

A. Yes; I was superintendent of agents from March 1st, 1890, until May 1st, 1894.

Q. 4. Did your duties as superintendent of agents include anything in relation to applications for shares in defendant's association, and if so, what?

A. Yes; all applications for membership for shares were under my charge and first approved by me before certificates were issued thereon.

Q. 5. You may state whether or not any application for membership and shares in defendant association, was made at any time by Welling & Bonnoitt, of Darlington, S. C., and if so, when, where, how and for how many shares?

A. Yes; on the 28th day of January, 1891, in the city of Syracuse, by a written application for fifty shares.

Q. 6. Have you said application, and if so will you produce it and make it a part of your deposition?

Plaintiff's and defendant's counsel agree that if there be any objection to attaching original documents to the *de bene esse* testimony, that said objection is waived, under the general reservation to object to any and all testimony upon the opening of the same upon the trial of the court.

A. I have; and so produce it; introduced and marked "Ex. A."

103 Q. 7. What, if anything, was done by the defendant association with said application on its receipt here at the home office?

A. It was accepted by the association, and under it five certificates of ten shares each, represented by Nos. 4967, 4968, 4969, 4970 and 4971 were issued and mailed to Welling & Bonnoitt, at Darlington, S. C., said certificates representing ten shares each of instalment stock of the par or maturity value of $1,000.00.

Q. 8. Are shares of the association issued or applications therefor accepted at any other place than at the home office of the defendant association in Syracuse, N. Y.?

A. No.

Q. 9. You may state whether or not any share has ever been issued by the defendant association, or any application has ever been accepted therefor at any other place than at its home office in Syracuse, N. Y.?

A. No.

Q. 11. You may state whether or not an advance or loan on said shares, or any of them, represented by said certificates Nos. 4967, 4968, 4969, 4970, 4971, was made by the defendant association to the plaintiffs, Welling & Bonnoitt, and if so for how much, when, where and how?

A. A loan was made upon fifty shares as represented by said certificates by the board of directors, on a written application signed and sworn to by Welling & Bonnoitt, in Darlington, S. C., on 26th day of April, 1891, same being granted by the board of directors 1891, at a regular meeting of the said board held in the city of Syracuse.

104 Q. 12. What was the amount of said advance or loan?

A. The maturity value of fifty shares, or $5,000.00.

Q. 13. What is the maturity value of each of the shares represented by the certificates you have referred to?

A. $100.00.

Q. 14. What does a share mature?

Plaintiff's counsel objects on the ground that the certificates of shares show, and the by-laws and the decisions of the State of New York show.

Defendant's counsel submits that the question is perfectly competent because under the law if the certificate contains a clause that the certificate will mature in seventy-eight months, or any other specified period, the courts as far as they have passed on that question have held that this is simply an estimated term of maturity; and that no association like a building and loan association has any power to fix the limit of time or guarantee any maturity period; and that therefore it is competent for the manager of the association to answer the question. The objection was sustained. Defendant excepts.

Q. 15. What do you mean by an advance to a member?

A. An advance or loan upon the shares before the same reach maturity.

Q. 16. Then is an advance sometimes called a loan?

A. Yes.

105 Q. 17. With reference to the shares of a member, what is the maximum amount that he or she can borrow from the association?

Ans. $100.00 per share, held by the member.

Q. 18. Have you the application for the loan or advance in question which you have already testified was made by the plaintiffs,

Welling & Bonnoitt, and granted by the board of directors of the defendant association? If so, produce it and make it a part of your deposition.

A. I have, and produce it; introduced and marked "Ex. L."

Q. 19. What papers were furnished by the plaintiffs, Welling & Bonnoitt, at the time the advance in question was made to them?

A. A mortgage dated May 1st, 1891, and recorded in the office of the R. M. C. of Darlington county, S. C., in Book No. 15, page 301; certain notes specified in the mortgage; an affidavit and application for advance; the certificates of stock assigned to the association as collateral to the loan; an abstract of title and policy of insurance.

Q. 20. Have you said mortgage, book of notes or stubs thereof, and affidavit and application for advance, and certificates of shares and assignments that you have just specified, and if so, will you produce them and make them a part of your deposition?

A. I have, and produce them. The same are introduced.

Q. 21. What are your duties as secretary?

A. To keep a record of all proceedings of stockholders, board of directors, executive committee; to keep all accounts and necessary books of the association, have in charge all papers and se-
106 curities belonging to the association and such other duties as are prescribed from time to time by the board of directors or executive committee.

Q. 26. On what terms, as regard interest and premiums, was the loan or advance in question made?

A. A gross premium of ten per cent. on the face of said loan, and a monthly premium and interest at five per cent. each, upon the face of said loan.

Q. 27. What do you mean by gross premium?

A. A sum of money which the borrower agrees to pay at the time the loan is consum-ated for the privilege or preference over other members in securing the advance or loan upon his stock previous to its maturity.

Q. 28. What was the gross premium and what was the monthly interest and premium in this case?

A. The gross premium was $500.00 and the monthly interest and premium was $41.70.

Q. 29. What was the monthly dues on fifty shares represented by the certificates in question?

A. $37.50.

Q. 30. What do the notes you have specified represent?

A. The amount of the monthly dues on the fifty shares in question, the monthly interest and premium on the loan which it was estimated at the time would mature the stock or said loan.

Q. 31. Assuming that an advance is made by the association to a member on his shares, for instance fifty shares, as in this case, by what method, assuming that the full maturity value of the
107 shares, to wit, $5,000.00, is advanced, can said advance or loan be repaid by the borrower?

A. By paying the full amount advanced.

Q. 32. Can it be repaid in any other way?

A. By maturing the shares pledged.

Q. 33. Can it be repaid in any other way, assuming that the shares have not matured?

A. By the borrower's paying the difference between book value of the certificate and the face of the loan.

Q. 34. Now you have stated that a portion of the sum specified in the notes you have mentioned in this case were dues on the fifty shares on the certificates in question; you may state why the notes embrace the particular number of monthly dues on these shares.

A. Because said number of payments was the amount which was estimated at the time would mature the stock.

Q. 35. How long with reference to the maturity of the certificates of shares in question, was the monthly interest and premium computed and included in said notes?

A. The interest and premium was computed until the shares were estimated to mature.

Q. 36. You have stated that the monthly dues on the shares in question was $37.50. How many of these monthly payments on said fifty shares have been paid to the defendant association?

A. From and including the month of February, 1891, to and including the month of July, 1897.

Q. 37. What payments of monthly interest and premium have been made?

108 A. From and including May, 1891, to and including July, 1897, also two payments of $41.70 each, in addition.

Q. 38. When a default is made in a monthly payment to the association, what if anything, accrues under its by-laws and articles by reason thereof?

A. A fine.

Q. 39. Shares advanced upon are denominated what?

A. Pledged shares.

Q. 40. On default in a monthly payment on pledged shares what fines accrue, if any?

A. Twenty cents per share, per month.

Q. 46. On the first day of August had the fifty shares in question matured or reached their par value of $100.00 per share?

A. No.

Q. 47. Had said shares of stock matured on the last Saturday of October, 1897, or at the time of the commencement of this action, or at any time since?

A. No.

Q. 48. What was the value of said shares on said last Saturday of October, 1897, and what is it at the present time?

A. $3,121.50.

Q. 49. Assuming that the withdrawal value of said shares is applied toward the payment of the loan in question, how much, if anything, was owing on said loan in October, say the last Saturday of October, 1897?

A. On the last Saturday of October, 1897, there was owing and unpaid on said loan, after applying the value of said shares, $1,878.50,

with interest, premium and fines from August 1, 1897, less
109 $83.40. There is now owing, figured up to November 1, 1898, $2,570.60. This computation is made as follows:

Debiting amount of loan		$5,000.00
Interest and premium from Aug. 1, 1897, to November 1, 1898		625.50
Fines		150.00
		$5,775.50
Crediting against this the withdrawal value of the fifty shares in question	$3,121.50	
Partial payment made Oct. 1-4, being two payments of $41.70 each	83.40	
Leaving balance owing Nov. 1, 1898		$2,570.60

Q. 52. How do you arrive at the withdrawal value of the shares in question?

A. By computing the dues paid thereon less the expense fund of ten cents per share per month, in accordance with sec. 1 of art. XI of the by-laws, and adding to that remainder its *pro rata* share of the earnings of the association.

Q. 53. Where can the by-laws of this association at the time the certificates of shares in question were issued and the advance thereon made, be found?

A. In a printed form on the back of said certificates.

Q. 54. Have you a certified copy of the articles of incorporation in force at that time, and if so, will you produce the same and make it a part of your deposition?

A. I have, and produce the same.

Introduced and marked "Ex. H."

110 Q. 55. Have the plaintiff- or either of them, or any one in their behalf, ever tendered to the defendant for execution, or requested the execution, of any satisfaction, piece or instrument for the discharge of the mortgage in this case?

A. No.

Q. 56. Are the plaintiffs, Welling & Bonnoitt, under the certificates in question, still stockholders of the defendant, and have they been since said shares were assigned to them?

A. Yes.

Q. 57. Are the plaintiffs, Welling & Bonnoitt, still the holders and owners of the fifty shares in question on the books of the defendant association, and have they been since said shares were assigned to them?

A. Yes.

Q. 58. In what book is the record of the stockholders of defendant association and their shareholdings kept?

A. In the book called the stock register.

Q. 59. I show you stock register, being a record of all certificates

from 1001 to 6900, and ask you if you can find on said book the record of certificates Nos. 4967, 4968, 4969, 4970, 4971, and, if so, you may state whether said record shows that Welling & Bonnoitt are now the holders and owners of said fifty shares, and have been since February 2, 1891?

A. The record so shows, to wit, the stock register, which is now in my hands and from which I now testify.

Q. 60. Have the dues paid on said fifty shares ever been applied by the defendant association on the loan in question?

A. No.

111 Q. 61. Have the plaintiffs, or either of them, or any one in their behalf, ever requested the defendant to apply the value of said shares on said loan?

A. No.

Q. 62. Before shares could be borrowed upon by a member how old did they have to be?

A. Three months old.

Q. 63. Thus three monthly payments of dues must of necessity have been paid before the loan was consummated, is that correct?

A. Yes.

Q. 64. How was account taken of these three monthly payments of dues on the book of notes given in connection with the loan?

A. The last three notes were made less by the amount of said three monthly payments due.

Cross-examination:

Q. 1. Does the defendant corporation admit the tender for the last three notes as alleged in the complaint, and also the tender of fifty cents for the discharge and satisfaction of said note?

A. It does.

Q. 2. The defendants having introduced evidence in various particulars of documentary character and otherwise, to which the plaintiff has reserved under stipulation the right to object at the trial of the cause, the plaintiff now call- for the production of certain documents for identification to be attached and to be introduced in testimony at the hearing by way of reply, provided the testimony of defendant be ruled as competent, and provided the plaintiff desires to introduce the same.

112 Q. 2. First, Mr. Pooler, I ask you to identify this eight-page leaflet. At what period was this sent out as a part of the literature of the defendant corporation?

A. It was one of the copies of the literature used at the time of the Welling & Bonnoitt loan. Paper filed as Identification Ex. 1.

Q. 3. The second paper that I ask you to identify I hand to you, what is it?

A. Copy of the articles of incorporation and by-laws of the association adopted May 14, 1894, and of resolutions passed by the stockholders March 15, 1897. Paper filed as Identification Ex. 2.

Q. 4. Under the statement above made calling for the identification of these exhibits, I ask you further to produce and identify a

copy of the annual report for each year from and including the year 1890 up to and including the year 1898.

A. We can produce only the reports from the third up to and including the eight. I cannot say that we had any reports up to that time. Produced and marked "Identifications Exhibits 3, 4, 5, 6, 7, 8."

Q. 5. Kindly produce for identification any other literature of the character "Identification Ex. 1," that was used by the corporation at the time of the Welling & Bonnoitt loan, and placed in the hands of their agents exemplifying the defendant's method of business and placed in the hands of their agents for the purpose of procuring business.

A. I know of no other literature used by the defendant corporation except the eight-page leaflet used for the identification marked "Identification 1."

113 Q. 6. Produce and identify under arrangement above, the report of special committee to a stockholder of affairs of corporation dated January 1st, 1898.

A. I produce it and identify it as "No. 9."

Q. 7. Since you have been connected with the defendant corporation has the association ever cancelled a mortgage similar in nature to the Welling & Bonnoitt mortgage, upon the payment of the seventy-eight notes secured by the mortgage?

A. I couldn't swear that we have.

Q. 8. Would you say, Mr. Pooler, that the association has not done so?

A. I would not so testify.

Q. 9. Mr. Pooler, I have seen in some report a case of the supreme court of the State of Pennsylvania, entitled "Bennet *vs.* Eastern;" was not the mortgage in that case cancelled on the payment of seventy-eight notes?

A. From my understanding of the statement, it was not.

Redirect by Mr. PIERCE:

Q. 10. If any mortgages have been cancelled by the defendant association on the payment of the seventy-eight notes, or a less sum, can you state the reason therefor, and if so, what is such reason or reasons?

A. By reason of insufficient security and the decision of the State court of North Carolina requiring a settlement on a six per cent. basis.

114 D. A. PIERCE, being duly sworn, deposes and saith as follows:

I reside in the city of Syracuse, N. Y., and am an attorney-at-law. I was admitted to practice in New York in 1884, and have been practicing law in said State ever since. I am the general attorney and one of the directors of the defendant association, and have been its general attorney since April, 1890. I am familiar with the laws of the State of New York in relation to building and loan associations and with the law generally applicable to such associations. I

have made said laws a special study on account of my connection as general attorney with defendant association, my duties as such having taken practically all of my time during a number of years past.

The defendant is a corporation, and was incorporated in March, 1890, under chapter 122 of the Laws of 1851 of the State of New York as amended by chapter 564 of the Laws of 1875 of said State. I have an exemplified copy of said laws and hereby produce the same. Introduced and marked "Ex. I."

There has been no change in said law of 1851 as amended by said law of 1875, so far as the fundamental acts and operations of associations incorporated thereunder are concerned.

I am familiar with the defendant's articles of incorporation and by-laws and all provisions thereof.

Among other things my duties as attorney of defendant
115 association required me to take charge, and I have taken charge and supervision of the drafting, execution, delivery, and perfecting of papers upon loans or advances made by the association, the perfecting and approving of title to property offered as security, the furnishing by the borrower of insurance and other papers required on the loan, and the final closing of the same, after the application therefor had been approved and granted by the board of directors of defendant association at its home office in Syracuse, N. Y.

I had charge of the closing of the loan in this Welling & Bonnoitt case. In that connection the following steps were taken: After the application for the loan in question had been granted by the board of directors of the association here, I first examined the abstract of title to the premises offered as security, and upon such examination and approval I caused the mortgage, notes, affidavits, and application for advance to be prepared here and forwarded the same to Darlington, with the abstract, for execution and the recording of the mortgage and the continuation and certification of the abstract down to and including the date of recording said mortgage. After the execution of said papers the same, together with the certificates of shares, in its present form, including all indorsements, were returned here and approved by me, whereupon the monies upon the loan were paid to Welling & Bonnoitt, the total amount actually paid them in cash being the sum of $4,500.00, the $500.00 gross premium bid and agreed to be paid by them as preference for the loan, being paid by them by deducting the same from the total amount
116 loaned, to wit, $5,000.00. These payments were made by checks of the association payable to the order of the plaintiffs Welling & Bonnoitt, drawn on its depository, the Trust & Deposit Company of Onondaga, in the city of Syracuse, N. Y. The monies were desired for the purpose of enabling Welling & Bonnoitt to build a building upon the premises embraced in said mortgage, and the same were forwarded after the receipt and approval by me of the papers above noted, from time to time and as the building progressed, and were paid over in full when it had been shown by them that such building had been entirely completed. Policy of insurance was furnished by them after the return of the notes and other

papers I have above indicated and when the building had sufficiently progressed for that purpose.

After the recording of the mortgage the same was forwarded here, and all of said papers have since been, and now are, in the possession of the defendant association, which is the holder and owner thereof.

The monthly payments specified in the mortgage embrace the monthly dues on the fifty shares of stock represented by certificates Nos. 4967, 4968, 4969, 4970, and 4971 (which I have already noted was forwarded with other papers and accepted by me prior to the final turning over of the monies upon the loan), and pledged as collateral and the monthly interest and premium on the above advance, which were estimated to accrue and become payable until said shares of stock should mature; that is to say, until they should reach the value of $100.00 per share from the payment of monthly dues thereon, together with the earnings of the association, to which they were entitled.

117 The advance or loan in question, the interest and premium thereon and the dues on said shares and fines thereon, were all payable at the home office of the defendant association in Syracuse, N. Y., by virtue of the provisions of the notes, mortgage, certificates of shares and section 3 of article XIV of the by-laws of defendant association, which said by-laws are printed upon the back of the certificates in question.

The receipts for $1,000.00 signed by Welling & Bonnoitt on the back of the certificates, was the method pursued at the time the loan in question was closed, of pledging the fifty shares advanced or borrowed upon as collateral to the loan in accordance to said section 3, article XIV of the by-laws.

The relation which the advance or loan in question bears to the fifty shares advanced upon, under the laws of the State of New York and the statute under which the defendant association is incorporated and its articles of incorporation and by-laws, is that the shares are simply collateral to the advance, and until their maturity are separate and distinct from the loan or advance. The borrower's relation to the association after the consummation of the advance or loan, is twofold. As to the shares borrowed or advanced upon, he or she is an investor; on the other hand, as a borrower, he or she is bound to make the payments on the advance by way of interest and premium, and the monthly dues on the shares until the shares are matured, at which time the application of the maturity value of the shares pays the advance or loan; one account offsetting and paying the other and thus discharging the mutual obliga-

118 tions existing. In other words, when the shares have matured the association is owing the borrower the maturity value of his shares advanced upon, in this case $5,000.00, and the borrower, on the other hand, is owing the association the amount of the advance, also $5,000.00, and thus as I have stated the mutual obligations of each becomes satisfied and discharged.

Under the statute under which the defendant corporation is incorporated, and the defendant's articles of incorporation and by-

laws, and the decisions of the courts of the State of New York, the defendant association is not bound to mature its stock within the time specified, if any, on the face of the certificate, say seventy-eight months, or any other fixed period, regardless of the actual value of said stock at the expiration of said fixed period, said value depending, of course, upon the payment of dues made thereon and their *pro rata* share of the earnings, that any period of maturity fixed or indicated in the certificates of stock in any way, is simply an estimated period, and that the association is not required to pay the face value thereof at the expiration of any such period unless the amount paid in thereon, together with the earnings apportioned thereto shall equal the par value of the shares. I base my opinion on the statute under which defendant is incorporated, its articles of incorporation and by-laws, and the decision of the supreme court of the State of New York in the case of—

O'Malley *vs.* People's Building, Loan & Savings Asso'n, 92 Hun., 572,

and similar decisions of other States under like statutes.

119 If the shares had not in fact matured at the expiration of seventy-eight months, the borrowing member is affected in this way: As I have testified, the borrower's relation to the association is twofold. He is not only a borrower but also an investor, who has received by the advance or loan the full maturity value of his shares. He is therefore bound to carry these shares until they have actually matured, notwithstanding that such time may extend beyond the estimated period, and under his contract the interest and premium must be paid until such time as the shares mature and cancel the loan. Furthermore, this position is sustained by the provision in section 7 of chapter 122 of the Laws of 1851 as amended, which I have already referred to, and which reads: "No holder of redeemed shares shall claim to be exempt from making the monthly or other stated payments provided in the articles of association, upon the ground that by reason of losses or otherwise, the payments on such shares shall amount to more than the amount originally advanced with legal interest thereon."

The computation for the repayment of the Bennett loan for which Bennett sought to recover on the ground of usury, the case being entitled and reported as—

Bennett *vs.* Eastern B. & L. Asso'n, 45 At. Rep., 684, was made regardless of the notes executed and unpaid on the advance, and in the same manner as that testified to by Mr. Pooler in this case.

Defendant introduces chap. 122 of the Laws of 1851 of the State of New York and chap. 564 of the Laws of 1875 of the State of New York amendatory of the first-named act. Marked Exhibit T.

120 Introduces vol. N. Y. Sup. Ct. Reports—the case of John O'Malley *vs.* The People's Building Loan and Savings Association, 92 Hun., page 572. Marked Ex. U.

Introduces case of Englehardt *vs.* Fifth Ward Loan Association, 148 N. Y. Court of Appeals Reps., page 281. Marked Ex. V.

Introduces case decided by court of appeals, State of New York,

entitled: The People of the State of New York, respondent, *vs.* John Lowe and others, appellants, decided in 1889, reported in vol. 117, N. Y. Repts., page 175. Marked Ex. W.

Introduces case of Concordia Savings and Aid Association, respondent, *vs.* Elizabeth A. S. Read, appellant, decided 16th October, 1883, by court of appeals, State of New York, reported 93 N. Y. Repts., page 474. Marked Ex. X.

Introduces the application for advance in this case, Exhibit O, and affidavit of title, etc., the application for advance dated prior to April—the application for loan; and the affidavit of the mortgagor is dated at a time prior to the application for a loan.

EXHIBIT S.

Application for an Advance.

To the board of directors of the Eastern Building and Loan Association of Syracuse, N. Y.

GENTLEMEN: At a regular meeting of your board, held April
121 27, 1891, having obtained the preference for an advance on fifty shares of Nos. 4967 to 4971 of your association, at a premium of ten per cent., I now respectfully request the advance be granted. I hereby agree to comply with the charter and by-laws of your association and all requirements defined by your committee of the board of directors.

LAWRENCE S. WELLING,
MARION BONNOITT, *Applicants.*

Witness:
E. O. WOODS.

STATE OF SOUTH CAROLINA, } ss:
County of Darlington, Town of Darlington, }

Lawrence S. Welling and Marion Bonnoitt, of said town, being duly sworn depose and say:

That the lands and premises described in the mortgage executed by deponents to the Eastern Building and Loan Association, of Syracuse, N. Y., under date of May 1st, 1891, and being 45½ x 146 ft. on south side of public square, said town and right of way more particularly described in said mortgage, are owned by deponents in fee-simple and free and clear from all mortgages (except the mortgage aforesaid), taxes, assessments, judgments, clouds, liens and incumbrances of every kind and description whatever, including obligations for purchase-money of the same, and that the title of deponents to the same is perfect and indefeasible; that deponents are now and have been since May 24, 1891, in the quiet and undisputed possession of said premises, and that deponents and
122 those under and through whom title is claimed, and has been derived, have actually and exclusively occupied the same under a claim of title for more than twenty years last past; that said mortgage premises are the same premises referred to in the

application for loan and appraised therefore by the appraising committee of said associ-tion at Darlington, S. C.; that no mortgage, lien or incumbrance of any kind has been executed, or suffered or permitted to be executed, by deponents upon said premises prior to the aforesaid mortgage to said association within the last ninety days, and that said mortgage is the only incumbrance now in force and a lien upon said premises. And deponents further depose and say that they are not on any person's bond as surety for the payment of any sum of money, or upon any official bond of any kind either as principal or surety, nor are there any judgments or decrees of any United States court outstanding against deponents or any former owner of said premises and a lien thereon; that deponents and Agnes W. Welling and Annie G. Bonnoitt, their respective wives, are citizens of the United States and are of the age of twenty-one years and upwards; and that the statements and representations herein are made for the purpose of procuring a loan from said association, for the security of which the aforesaid mortgage is given, and for no other purpose whatever. Deponents further say that their aforesaid respective wives have duly renounced their respective dower rights in said premises under said mortgage to said associ-tion.

LAWRENCE S. WELLING.
MARION BONNOITT.

Subscribed and sworn to before me this 6th day of June, 1891.

E. O. WOODS,
[L. S.] *Notary Public, S. C.*

123 EXHIBIT T.

UNITED STATES OF AMERICA, }
State of New York. }

By John Palmer, secretary of state and custodian of the great seal thereof.

It is hereby certified, that John Palmer was, on the day of the date of the annexed certificate and attestation, secretary of state of the State of New York, and duly authorized to make the same; that such secretary of state is the proper officer to make such certificate and attestation and that the same are in due form; that the seal affixed to said certificate is the seal of office of the secretary of state of the State of New York; that the signature thereto of the said secretary of state is in his own proper handwriting, and is genuine; and, further, that the secretary of state is the custodian of the original law, so certified and attested, and custodian of the great seal of said State, hereunto affixed, and that full faith and credit may and ought to be given to his official acts.

[L. S.] In testimony whereof, the great seal of the State is hereunto affixed.

Witness my hand at the city of Albany, the 25th day of January,

in the year of our Lord one thousand eight hundred and ninety-eight.

JNO. PALMER,
Secretary of State.

124 CHAP. 122.

An act for the incorporation of building, mutual loan, and accumulating fund associations.

Passed April 10, 1851.

The People of the State of New York, represented in senate and assembly, do enact as follows:

1. Any number of persons, not less than nine, may associate and form an incorporated company for the purpose of accumulating a fund for the purpose of real estate, the erection of buildings, or the making of other improvements on lands, or to pay off incumbrances thereon; or to aid its members in acquiring real estate, making improvements thereon and removing incumbrances therefrom, and for the further purpose of accumulating a fund to be returned to its members, who do not obtain advances as above mentioned, when the funds of such association shall amount to a certain sum per share, to be specified in the articles of association.

2. Such persons shall severally subscribed articles of association, in which shall be set forth the name of the corporation, the time of its regular meetings and how special meetings may be called, and what shall constitute a quorum to transact business at meetings; the qualification of members and how constituted; what officers, trustees and attorney there shall be, and how and when chosen, and their duties, and how removed or suspended from office; the entrance fee of new members and new shares, the monthly or weekly dues per share, the redemption fee on shares on which advances shall be made, and fees to be paid on the transfer of shares;
125 the fines and penalties for non-payment of dues or fees, or other violation of the articles of association; the manner of redemption of shares by advances made thereon, the mortgaged security to be taken on such advances, and how the same may be redeemed or changed; the manner of the transfer or withdrawal of shares; the manner of investing funds not required for advances on shares; the qualifications of voters at the meetings, and the mode of voting; the ultimate amount to be paid to the owners of unredeemed shares; the manner of altering or amending the articles of association and such other provisions as shall be necessary for the convenient and effective transaction of the business thereof; provided that the same shall not in any respect contravene the constitution or laws of this State.

3. A true copy of such articles signed by the officers of the association, together with a statement showing when the association was organized, and the place of the transaction of its business, and the name of the officers and trustees at the time of the making such statement, which shall be verified by oath or affirmation before any officer authorized to take affidavits, to be used in courts of justice

shall be filed in the office of the clerk of the county in which such association shall transact its business; and thereupon the persons who have subscribed the articles of association as aforesaid, and such other persons as shall become members of such association and their successors shall be a body corporate, by the name specified in such articles of association, and shall possess the powers and privileges, and be subject to the provisions of title third of chapter
126 eighteen of the first part of the Revised Statutes, so far as those provisions are consistent with the provisions of this act and they shall by their corporate name, be capable in law of purchasing, holding and conveying any real and personal estate whatever, which may be necessary to enable the said company to carry on their operation named in such certificate.

4. It shall be lawful for the trustees to call in and demand from the stockholders respectively, all such sums of money by them subscribed, at such times, and in such payments or instalments, as the articles of association shall prescribe, under the penalty of forfeiting the shares of stock subscribed for, and all previous payments made thereon, if payment shall not be made by the stockholder within sixty days after a personal demand or notice requiring such payment shall have been published for six successive weeks in the newspaper nearest to the place, where the business of the company shall be carried on as aforesaid.

5. All corporations formed under this act shall have power to borrow money for temporary purposes not inconsistent with the objects of their organization; but no loan for such purposes shall have a longer duration than two years, nor shall such indebtedness exceed at any one time one-fourth of the aggregate amount of the shares and parts of shares and the income thereof, actually paid in and received.

6. Parents and guardians may take and hold shares in such association in behalf, and for the use of their minor children or wards, provided the cost of such shares be defrayed from the personal
127 earnings of such minor children or wards, or by gifts from persons other than their male parents; married women may take and hold shares in such associations provided the cost of such shares be defrayed from their personal earnings, the personal earnings of their children voluntarily bestowed for this purpose, or from property bequeathed or given to them by persons other than their husbands.

7. Every such corporation shall terminate except for the purpose of settling its affairs, whenever all the shares thereof shall be redeemed by advances thereon; or whenever the owners of unredeemed shares shall be paid the ultimate value thereof as provided in the articles of association and not sooner, but no dividend of principal or of profits shall be made until such termination; nor until all the debts of the association shall have been paid or otherwise sufficiently provided for. No holder of redeemed shares shall claim to be exempt from making the monthly payments provided in the articles of association upon the ground that by reason of losses, or otherwise, the association has continued longer than was

originally anticipated, whereby the payments made on such shares may amount to more than the amount originally advanced with legal interest thereon; nor shall the imposition of fines for non-payment of dues or fees, or other violation of the articles of association, nor shall the making of any monthly payment required by the articles of association, or of any premium for loans made to members be deemed to be a violation of the provisions of any statute against usury.

8. Any existing association, formed for the purposes men-
128 tioned in the first section of this act, may, on the vote of a majority of the voting shares, at any regular meeting, after the passage of this act, become entitled to the benefit of this act, on complying with the second and third sections thereof, unless the second section has heretofore been complied with; in which case it shall be necessary to comply only with the said third section.

9. No officer, trustee, attorney, agent or servant of any association hereby incorporated, shall use or dispose of any part of the funds of such association, or assign, transfer, cancel, deliver up or acknowledge satisfaction of any bond, mortgage or other written instrument belonging to such association, unless duly authorized or be guilty of any fraud in the performance of his duties; and every person guilty of a violation of this section shall be liable civilly to the party injured, to the extent of the damage thereby incurred, and shall also be liable to an indictment for a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court by which he shall be tried.

10. Each association formed under the provisions of this act, shall, at the close of its first year's operations, and annually at the same period in each year thereafter publish in at least two newspapers published in the place where their business may be located, or if no newspaper shall be published in such place, then in any two newspapers published nearest such place, a concise statement verified on the oaths of its president and secretary, showing the actual financial condition of the association, and the amount of its property and liabilities specifying the same particularly.

129 11. All the shareholders of any association formed under this act, shall be individually liable to the creditors of said association to an amount equal to the amount of stock held by them respectively, for all debts contracted by such association. The directors or other officers of every association formed under this act, shall be personally liable for any fraudulent use, disposition or investment of any monies or property belonging to such association, or for any loss which shall be incurred by any investments made by such directors or other officers other than such as are mentioned in and authorized by this act; but no director or other officer of any such association, shall be liable as aforesaid, except he authorized, sanctioned, approved, or made such fraudulent use, disposition or investment as aforesaid.

12. No person holding stock in any such company, or executor, administrator, guardian or trustee; and no person holding such stock as collateral security, shall be personally subject to any

liability as stockholder of such company, but the person pledging such stock, shall be considered as holding the same, and shall be liable as a stockholder accordingly, and the estate and funds in the hands of such executor, administrator, guardian or trustee, shall be liable in like manner, and to the same extent as the testator or intestate, or the ward, or person interested in such trust fund would have been if he had been living and competent to act, and hold the same stock in his own name.

13. Every such executor, administrator, guardian or trustee, shall represent the share of stock in his hands at all meetings of
130 the company, and may vote accordingly as a stockholder; and every person who shall pledge his stock as aforesaid, may, nevertheless, represent the same at all such meetings and may vote accordingly as a stockholder.

14. In case it shall happen at any time that an election of officers shall not be made on the day designated by the by-laws of said company, when it ought to have been made, the company for that reason shall not be dissolved, but it shall be lawful on any other day to hold an election for trustees, in such manner as shall be provided for by the said by-laws; and all acts of trustees shall be valid and binding as against such company, until their successors shall be elected.

15. The legislature may at any time alter, amend or repeal this act, or may annul or repeal any incorporation formed or created under this act, but such amendment or repeal shall not, nor shall the dissolution of any such company take away or impair any remedy given against any such corporation, its stockholders or officers, for any liability which shall have been previously incurred.

16. Any company which may be formed under this act may increase or diminish its capital stock by complying with the provisions of this act, to any amount which may be deemed sufficient and proper for the purposes of the corporation. But before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the amount of capital to which it is proposed to be reduced, such amount
131 of debts and liabilities shall be satisfied and reduced so as not to exceed such diminished amount of capital.

17. Whenever any company shall desire to call a meeting of the stockholders for the purpose of increasing or diminishing the amount of its capital stock, it shall be the duty of the trustees to publish a notice signed by at least a majority of them, in a newspaper in the county, if any shall be published therein, at least three successive weeks, and to deposit a written or printed copy thereof in the post-office, addressed to each stockholder at his usual place of residence, at least three weeks previous to the day fixed upon for holding such meeting, specifying the object of the meeting, the time and place when and where such meeting shall be held, and the amount to which it shall be proposed to increase or diminish the capital, and a vote of at least two-thirds of all the shares of stock

shall be necessary to an increase or diminution of the amount of its capital stock.

18. If at any time and place specified in the notice provided for in the preceding section of this act, stockholders shall appear in person or by proxy, in numbers representing not less than two-thirds of all the shares of stock of the corporation, they shall organize by choosing one of the trustees chairman of the meeting, and also a suitable person for secretary, and proceed to a vote of those present, in person or by proxy; and if on canvassing the votes, it shall appear that a sufficient number of votes has been given in favor of increasing or diminishing the amount of capital, a certificate of the proceeding, showing a compliance with the pro-
132 visions of this act, the amount of capital actually paid in, the whole amount of debts and liabilities of the company, and the amount to which the capital stock shall be increased or diminished, shall be made out, signed and verified by the affidavit of the chairman, and be countersigned by the secretary; and such certificate shall be acknowledged by the chairman, and filed as required by the first section of this act, and when so filed, the capital stock of such corporation, shall be increased or diminished to the amount specified in such certificate.

19. The shares held by the members of all associations incorporated under the provisions of this act, shall be exempt from sale on execution for debt, to an extent not exceeding six hundred dollars in such shares, at their par value.

20. No loan made by any such association to any of its members, may exceed in amount the par value of the capital stock for which such member may have subscribed.

21. The copy of any certificate of incorporation, filed in pursuance of this act, certified by the county clerk or his deputy, to be a true copy, and of the whole of such certificate, shall be received in all courts and places, as presumptive legal evidence of the facts therein stated.

22. This act shall take effect immediately.

CHAP. 564.

An act to amend chapter one hundred and twenty-two of the
133 Laws of Eighteen hundred and fifty-one, entitled "An act for the incorporation of building, mutual, loan, and accumulating fund associations."

Passed June 9, 1875.

The People of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. The seventh section of chapter one hundred and twenty-two of the Laws of Eighteen hundred and fifty-one, entitled "An act for the incorporation of building, mutual, loan and accumulating fund associations," is hereby amended so as to read as follows:

7. The trustees of any association formed under the provisions of this act, may, from time to time, declare dividends from the earn-

ings of the association, payable in such manner as may be provided in the articles of association, but no dividend shall be declared, except from the earnings of the association, and if the trustees of any such association shall declare and pay any dividend when the company is insolvent, or any dividend, the payment of which would render it insolvent, they shall be jointly and severally liable to the extent of the dividend so declared and paid, for all the debts of the association then existing or that shall be thereafter contracted while they shall respectively continue in office; provided, that if any of the trustees shall object to the declaring of such dividend or to the payment of the same, and shall, at any time before the time fixed for the payment thereof, file a certificate of his objection in writing with the clerk of the company, and with the clerk of the county, he shall be exempt from the said liability. But no trustee who
134 shall be present at any meeting when such dividend is declared, shall be exempt from such liability, unless he shall then and there object to the declaration or payment of such dividend, and shall also procure his objection to be noted in the book of minutes of such association. No holder of redeemed shares shall claim to be exempt from making the monthly or other stated payments provided in the articles of association, upon the ground that, by reason of losses or otherwise, the association has continued longer than was originally anticipated, whereby the payments made on such shares may amount to more than the amount originally advanced, with legal interest thereon; nor shall the imposition of fines, for the non-payment of dues or fees, or other violation of the articles of association, nor shall the making of any monthly payment required by the articles of association or of any premium for loans made to members be deemed a violation of the provisions of any statute against usury.

2. Every corporation organized under the provisions of said act, and every corporation heretofore organized under the laws of this State for purposes similar to those provided for in said act, shall annually make a full report in writing of the affairs and condition of such corporation, on the first day of January in each year, to the superintendent of the banking department in such form, and by such officers of the said corporation, as the said superintendent may designate, which report shall be in place of any report which any such corporation may now be required to make to the supreme court, the comptroller, or otherwise. Such report shall be
135 verified by the oath or affirmation of the officers making such report; and any willful false swearing in regard to such report shall be deemed perjury, and be subject to the prosecutions and punishments prescribed by law for that offense. Every such report shall be made within twenty days after the day to which it relates, and shall be in such form, and contain such statements, returns and information, as to the affairs, business, condition, obligations and resources of such corporation, as the said superintendent may, from time to time, prescribe and require. And the said superintendent may, if he be of opinion that it is desirable, require that a like report, either wholly or in part, as to the particulars afore-

said, be made to him at any time, by any such corporation aforesaid, within such period as he may designate.

3. It shall be the duty of the said superintendent, once in two years, either personally or by some competent person or persons, to be appointed by him, to visit and examine every corporation required by this act, to report as aforesaid. The said superintendent and every such examiner shall have power to administer an oath to any person whose testimony may be required on any such examination, and to compel the appearance and attendance of any such person, for the purpose of such examination, by summons, subpœna or attachment, in the manner now authorized in respect to the attendance of persons as witnesses in the courts of record of this State; and all books and papers which it may be deemed necessary to examine by the superintendent, or the examiner or examiners so appointed, shall be produced and their production
136 may be compelled in the like manner. The expense of every such examination shall be paid by the corporation examined to such amount the superintendent shall determine. Whenever such examination shall be made by the superintendent personally, or by one or more of the regular clerks in his department, no charge shall be made on such examination but for necessary traveling and other actual expenses.

4. On every such examination inquiry shall be made as to the condition and resources of the corporation generally, the mode of conducting and managing its affairs, the action of its directors or trustees, the investment of its funds, the safety and prudence of its management, the security afforded to those by whom its engagements are held, and whether the requirements of its charter and of law have been complied with in the administration of its affairs.

5. If it shall appear to the said superintendent from the report of any such corporation, or from any examination made by him, or from the report of any examination made to him, that any corporation has committed a violation of its charter or of law, or is conducting business in an unsafe or unauthorized manner, he shall, by an order under his hand and seal of office addressed to such corporation, direct the discontinuance of such illegal or unsafe practices and conformity with the requirements of its charter and of law, and with safety and security in its transactions, and whenever any corporation shall refuse or neglect to make such report as is hereinbefore required, or to comply with any such order as aforesaid; or whenever it shall appear to the superintendent that
137 it is unsafe or inexpedient for any corporation to continue to transact business, he shall communicate the facts to the attorney general, who shall thereupon be authorized to institute such proceedings against any such corporations as are now, or may hereafter be provided for by law, in the case of insolvent corporations, or such other proceedings as the nature of the case may require.

6. If any such corporation shall fail to furnish to the superintendent of the banking department any report or statement required by this act at the time so required it shall forfeit the sum of ten dollars per day for every day such report or statement shall be so

delayed or withheld, and the said superintendent may maintain an action in his name of office to recover such penalty, and when collected, the same shall be paid into the treasury of the State and be applied to the expenses of the bank department.

7. This act shall take effect immediately.

104–6–17–'97–200.

STATE OF NEW YORK, *Office of the Secretary of State,* } ss:

I have compared the preceding — with the original laws on file in this office, and do hereby certify that the same are correct transcripts therefrom, and the whole of said original laws.

Given under my hand and the seal of office of the secretary of state, at the city of Albany, this 25th day of January in the year one thousand eight hundred and ninety-eight.

[L. S.]

JNO. PALMER,
Secretary of State.

138 EXHIBIT U.

O'Malley *vs.* People's Building, Loan and Savings Association. Reported in 92 Hun. (N. Y.), 572.

LEWIS, *J.:*

"This action was brought to recover the sum of $500, claimed to be due upon a certificate of five shares of stock issued by the defendant to the plaintiff, of the par value of $100 a share. The principal question presented is whether the plaintiff is entitled to recover the par value of the shares, or whether his recovery shall be limited to the sum of $371, that being the amount, as claimed by the defendant, which the shares had earned at the time this action was commenced.

"The defendant is a building, loan and savings association. It was organized in the month of December, 1887, under chapter 122 of the Laws of 1851, entitled 'An act for the incorporation of building, mutual loan and accumulating fund associations,' and the acts amendatory thereof and supplemental thereto. Its principal office is in the village of Geneva, Ontario county, N. Y. Its capital stock is $5,000,000, represented by 50,000 shares of the par value of $100 a share. It is provided by section 1 of the act of 1851 that any number of persons, not less than nine, may associate in forming an incorporated company for the purpose of accumulating a fund for aiding its members in acquiring real estate, making improvements thereon, and removing incumbrances therefrom, and for the further purpose of accumulating a fund to be returned
139 to its members who do not obtain advances upon their shares of stock when the funds of the association shall amount to a certain sum per share, to be specified in the articles of association. The act provides for the filing of articles of association, which are to be subscribed by the members, in which shall be stated, among other things, the amount of the entrance fee of new members and new shares, the monthly or weekly dues per share, the redemption

fee on shares on which advances shall be made, the fines and penalties for non-payment of dues, fees, or other violations of the articles of association, the manner of redemption of shares by advances made thereon, the mortgage security to be taken on such advances, how same may be redeemed or changed, and the ultimate amount to be paid to the owners of unredeemed shares. It was further provided by said act that corporations formed under it shall have the power to borrow money for temporary purposes, not inconsistent with the objects of their organization, but no loan for such purposes shall have a longer duration than two years.

"Articles of association were duly subscribed and filed by the defendant. It is provided therein that persons, on becoming members of the association, shall duly subscribe a written application for shares desired to be purchased, and pay an admission fee of $1 on each share, and thereafter pay one dollar a month on each share, and in addition thereto the sum of 25 cents every three months. The scheme and plan of the association is, briefly, to issue its shares of stock to persons desiring to purchase the same, and with
140 the moneys paid by the shareholders, and the fines and penalties which may be imposed upon the members, to accumulate a fund which, after paying the expenses of the association, is to be loaned or advanced to the holders of the shares of stock who may make application therefor, to the amount of the par value of the stock. The moneys advanced are to be secured by the bond of the applicant, and by a mortgage upon unincumbered real estate, conditioned to pay on the amount borrowed annual interest of 5 per cent., and in addition thereto a premium of 5 per cent. per annum, the interest and premium to be paid in weekly installments, until the mortgage matures. The certificates of stock upon which advances are not made may be held by the owner as an investment simply. The holder thereof is entitled to the dividends which may be made thereon from time to time. It is provided by the defendant's by-laws that any member, in lieu of paying the monthly and quarterly installments, may, at the time of making application, pay $60 a share, and receive a paid-up certificate with a maturity face value of $100. The holders of these paid-up certificates are not liable for any admission fee, fines, or to the cancellation of their stock; and they may, upon the surrender thereof, withdraw the amount they have paid on the same at any time after three years from the date of issue thereof, and before maturity, together with annual interest of 6 per cent. The by-laws also provide that the directors may, in lieu of the admission and other fees, deduct from paid-up certificates 2 per cent. per annum on the maturity
141 face value of the stock for the estimated period of five years, and place the same in the expense fund, to defray the expenses of the association.

"The purpose of the law, it will be seen, is to provide an opportunity for the people of limited means to invest a portion of their income, making payments in small sums from time to time, and thereby secure to themselves homes, which they might not be able to do if they were required to make their payments in large amounts.

If the affairs of such associations are conducted in conformity to the law and their articles of association and by-laws, the investments of the shareholders are reasonably safe; but if, on the contrary, they are improvidently and carelessly managed, they are quite sure to fail in their purpose.

"There was issued to the plaintiff, upon his written application therefor, on the 2d day of December, 1889, a certificate for five shares of the defendant's stock. It was provided in the certificate that the plaintiff was constituted the holder of five shares of stock of the defendant, of $100 each, 'in consideration of the entrance fee, together with agreements and full compliance with the terms and conditions printed upon the back of this certificate, and the articles of association and by-laws adopted by *said* the said association, all of which are hereby referred to and made a part of this contract.' The certificate further stated that the defendant agreed to pay said shareholder, or his heirs, executors, administrators or assigns, the sum of $100 for each of said shares at the end of five years from the date thereof, or, in case of his death before the expiration of said
142 term, then the sum of money equal to the amount of monthly instalments paid on the shares, together with all dividends which have accrued thereon, 'all of which are payable in the manner and upon the conditions set forth in the articles of association and by-laws, and terms and conditions printed on the back of this certificate.' The plaintiff in all respects complied with the rules and regulations of the defendant, and upon the expiration of the five years from the date of the certificate he presented it to the defendant, and demanded payment for its par value. The defendant declined to pay the $500, for the alleged reason that the shares had not then earned that amount, but stated that the amount they had earned was $371, which the defendant offered to pay to the plaintiff upon the surrender by him of the certificate. The plaintiff declined to accept the amount so offered and thereupon brought this action. The trial court construed the certificate to be an absolute, unconditional promise to pay the $500 upon the expiration of five years from its date, and directed a judgment accordingly.

"The main question presented by the appeal, as stated, is whether the plaintiff is entitled to recover the face value of the certificate or, shall his recovery be limited to the amount the shares have earned? If the language of the certificate alone is to be considered, there can be but little doubt that the decision of the trial court was right. In construing this contract, the defendant's articles of association and by-laws must be considered as part of the contract, and given their proper effect. Gibbs *vs.* Bank, 83 Hun, 92; 31 N. Y. Supp. 406; *In re* Commissioners of Washington Park, 52 N. Y., 131.
143 It is reasonably certain that if the construction contended for by the plaintiff is to prevail, it will thwart the scheme and purpose of the association, and probably bankrupt it. The plan of the organization contemplates that the holders of certificates shall be entitled to share equally in its earnings. It is a mutual association. It cannot with any propriety be claimed that, under the defendant's articles and by-laws, it was contemplated that

there should be any distinction in the time for the maturity of the shares of stock. The officers of the defendant, however, assumed to issue to the plaintiff a certificate which, upon its face, states that the company, at the end of five years, will pay to the holder thereof the sum of $100 a share. Plaintiff's payments were $13 a year on each share of his stock, amounting, upon his five shares, to $65 a year, and in five years to the sum of $325. Interest computed at 6 per cent. per annum on the payments from the time they were respectively made until the end of the five years, amounts to between $45 and $46, which, added to the payments, makes $371, the amount which the defendant claimed the shares had earned, and which it offered to pay. If the plaintiff is entitled to recover the $500, his investment earned him from 22 to 23 per cent. per annum; an amount of interest which, if paid upon all certificates issued by the defendant, would in probability bankrupt the association, a result which, it would seem, must have been apparent to the parties when the transaction took place.

"The plaintiff was presumably aware of the general plan
144 of the association, for it was stated in his certificate that the articles of association and the by-laws were to form a part of the contract, and, as stated, the general plan of the association contemplated that all the shareholders should be entitled to a *pro rata* share of its earnings. He must have been aware that it was not at all probable that the earnings of the association would be sufficient to pay the rate of interest which his construction of the contract calls for. It was not possible to know, at the time the certificate was issued to the plaintiff, when it would mature by the accumulation of dividends, for that necessarily depended upon the earnings of the association, and that could not be determined in advance. The dues, fees and penalties paid by the shareholders, with the interest and premiums paid by the borrowing members, make up and constitute the income of the association, and provide the fund from which the dividends upon the stock are paid. People *vs.* Preston, 140 N. Y., 549; 35 N. E., 979. The dividends can only be paid out of the earnings. Section 7, c. 122, Laws 1851, as amended by chapter 564, Laws 1875. If the five-year clause be construed as an estimated time for the maturity of the certificate, then the certificate conforms to the general scheme of the organization and to the statutes. The authority to issue a certificate with a fixed period of maturity is not expressly given, either by the statute or by the articles of association or by-laws of the society. We are of the opinion that the defendant did not possess the power or authority to issue a certificate containing a fixed maturity period, and that the clause in the certificate in question should be construed as an estimated
145 period of maturity. The amount actually earned by the certificate at the time it was presented by the plaintiff for payment was only $371.

"The judgment should be reversed, and a new trial granted, costs to abide the event, unless the plaintiff, within 20 days, stipulates to reduce the recovery of damages to $371, and interest thereon from December 2, 1894, and, in that event, the judgment be so modified,

and, as modified, affirmed, without costs of this appeal to either party.

"A like disposition should be made of the case of Church *vs.* Same Defendant, *infra*.

"All concur."

EXHIBIT V.

In the case of Englehardt *vs.* Fifth Ward Dime Savings and Loan Association, reported in 148 N. Y., at page 281, it was held that the articles of association which showed the scheme of the organization and defined the obligation of the association, and the rights of members, are binding upon each member thereof. They establish the relation between the association and the stockholders, and constitute a contract between them.

146

EXHIBIT W.

PEOPLE
v.
LOWE ET AL.

Reported in 117 N. Y., page 175.

(Court of Appeals of New York, Nov. 26, 1889.)

The Second Union Co-operative Land & Building Society, in January, 1868, was incorporated under "An act for the incorporation of building, mutual loan, and accumulating fund societies," passed April 10, 1851. Under section 1 of that act, any number of persons, not less than nine, can associate and form an incorporated company for the purpose of accumulating a fund for the purchase of real estate, the erection of buildings or the making of other improvements upon lands, or to pay off incumbrances thereon, or to aid its members in acquiring real estate, making improvements thereon, and removing incumbrances therefrom; and for the further purpose of accumulating a fund to be returned to its members who do not obtain advances, when the funds of such association shall amount to a certain sum per share, to be specified in the articles of association. Section 2 provides that such persons shall severally subscribe articles of association, in which shall be set forth the name of the corporation, the monthly or weekly dues per share, the redemption fee on shares on which advances shall be made, the fees to be paid on the transfer of shares, the fines and penalties for nonpayment of dues or fees or other violation of the articles of association, the manner of redemption of shares by advances made thereon,
147 the mortgage security to be taken on such advances, and how the same may be redeemed or changed, the manner of investing funds not required for advances on shares, and other matters. Section 7 provides that every such corporation shall terminate, except for the purpose of settling its affairs, whenever all the shares thereof shall be redeemed by advances thereon, or when-

ever the owners of unredeemed shares shall be paid the ultimate value thereof as provided in the articles of association, and no sooner. Section 20 provides that no loan made by any such association to any of its members shall exceed in amount the par value of the capital stock for which such member may have subscribed.

The articles of association adopted by the society provide, in article 2, that the object of the society is, by co-operation, to enable its members to become their own landlords, by providing funds for each member to purchase real estate, and to make improvements thereon. Article 14 provides that all persons, on becoming members, shall pay an entrance fee of 50 cents for the first two shares, and 25 cents for each additional share; and that the subscription shall be 50 cents per week on every share of $1,000 held by any member. Article 16 provides that appropriations shall be disposed of by alternate ballot and open sale; that about two weeks before the money at bank is expected to amount to $1,000 an appropriation by ballot shall take place; that the member obtaining it shall receive $1,000 on each share held by him, to be paid as soon as the money at the bank amounts to that sum; that one other right of appropriation shall be sold the same evening, the amount to
148 be sold to be fixed at $1,000; that the purchaser shall be entitled to the full amount of shares held by him at the same ratio; that it shall be sold to the highest bidder, the payment for the same, with no more than $250 premium for each $1,000 share, being extended over a space of ten years, and, should more than $250 premium be given per thousand, the amount over such sum shall be paid in cash; that the payment of all such appropriations being extended over a space of ten years shall go towards making up future appropriations, that a member having obtained an appropriation may select real estate, upon which he shall give a mortgage for the repayment of the sum advanced, such advance to be repaid at the rate of 10 per cent. per annum, in monthly installments; that when the whole advance has been repaid he shall continue to pay his weekly subscriptions until he has paid the whole amount of subscriptions due. Article 24 provides that, when each of the members has obtained his appropriation, then, the object of the society having been accomplished, it shall cease to exist.

The shares of the corporation were $1,000 each and many persons became members thereof. The corporation had no actual capital, except the money accumulated from the weekly dues, fines and premiums on loans; and from this appropriations were made from time to time by ballot and sale, as provided in the articles, secured by mortgages. Prior to the 23d day of October, 1884, nearly all the members had taken appropriations, to wit, $1,000 for each share held by them, and upon such appropriations they had made the payments required at the rate of 10 per cent. annually, and had also
149 paid their weekly dues, and on the day last named there were 40 members still remaining in the society, 34 debtor members and 6 creditor members. On that day, at a special meeting regularly called, the following preamble and resolutions were adopted: "Whereas, the Second Union Co-operative Land and

Building Society of the City of New York has now fulfilled all the purposes for which it was created, and all conditions wherein it was and is limited to determine having been performed save the passage of these resolutions only, and due notice of the same having been given to the members of the said society, be it resolved accordingly that all weekly subscriptions be hereby discontinued, and that the said society be dissolved by the passage of these resolutions, and that its board of management on such dissolution shall immediately become its lawful successor for the purpose of winding up its affairs by collecting its debts, settling with its members and distributing its assets upon the following basis: (1) The creditors or unappropriated members after paying their indebtedness to the society up to November 1st shall receive $700 each on each unappropriated share held by them, or any of them, in lieu of the share which such member might otherwise be entitled to receive of the assets of the society, and in full satisfaction of all claims upon and interest in the funds of said society. (2) Each debtor or appropriated member shall be credited with the full $350 on each share held by him (as his share of the society's surplus funds) and the same shall be offset against the member's indebtedness on bond or mortgage or otherwise to the society, the balance struck, and the members settled with accordingly. It is further resolved and
150 provided, however, that $25 per share of the amounts to be allowed to both creditor and debtor members, as provided in the foregoing resolutions, shall be withheld, in settling with each member, to provide a fund for the payment of legal and other expenses incurred in winding up the society, and provide against a reduction of the estimated amount of the assets upon which the foregoing calculation is based, by reason of the failure of the board of management to collect all of the debts due to the society, the $25 per share so withheld to be paid to the member upon the final settlement of the society's affairs, less such deficiencies as may be charged to the same by reason of the aforesaid. Be it further resolved, that the board of management shall be authorized and empowered to employ competent counsel to bring such suits and to perform such legal services in winding up the said society as the said board may deem necessary, and to pay for the same out of the funds—society funds in their possession. Be it further resolved that the board of management shall be authorized and empowered to employ a clerk to attend to the clerical duties of the board, with a salary to be fixed by the board."

At that time the members had paid in dues the sum of $442 upon each share, and the property of the society, consisting mainly of mortgages given by the members to secure appropriations made to them, amounted to $30,000, which, if then divided among 82 shares the whole number then existing, would have given to each share $365. Under these resolutions the board of managers proceeded to wind up the affairs of the society, and had, prior to the com-
151 mencement of this action, in April, 1887, settled satisfactorily with all the members, and received releases from them, except five, three of whom were debtor members, and two creditor

members. In the month last mentioned, at the instigation of these members, or of some of them, this action was commenced by the attorney general. In the complaint various acts of misconduct on the part of the defendants were mentioned, and it is charged that the resolutions referred to, excepting so much of them as declared the dissolution of the society, were contrary to the articles, the by-laws, and the plan of operation of the society, and were only passed for the purpose of enabling the defendants to carry out their fraudulent scheme of securing to themselves unlawful dividends and profits, and to invalidate the provisions contained in the articles, and a judgment is demanded that the resolutions, in so far as the same provide for the distribution of the assets of the society, be declared null and void and of no effect; that the individual defendants be compelled to account for their official conduct in the management and disposition of the funds and property of the society; that they be adjudged to pay back into the fund of the society all the monies illegally paid out by them for or on account of unlawful dividends, and all monies lost to the society by their neglect to collect the dues, fees and fines, which were owing by the defendants and others, and all monies collected by them in pursuance of the resolution above set out; that the individual defendants be removed and suspended from exercising their office as officers of the society, and that they be enjoined from receiving any debt or demand owing to the society, or from prosecuting any of the
152 foreclosure suits commenced by them against members of the society, or in any way interfering with any of the funds of the society, or from delivering to any one any money, property, or effects of the society, and that it be declared dissolved; that a receiver of its property be appointed by the court, with the usual powers of such receivers in like cases, and that such receiver be directed to pay the creditor members of the society $1,000 on each share, and that the mortgages executed by members of the society be declared discharged, except as to subscription and redemption fees, which became due before October 23, 1884.

The action was put at issue by the defendants, and brought to trial at a special term, and the trial judge found, as facts, the organization of the corporation; the adoption and filing of the articles of association; that on the 23d day of October, 1884, the society could pay to each creditor member the sum of $1,000 upon every share held by such creditor member, and could be dissolved in accordance with the plan of the organization; that the individual defendants caused the society to call a special meeting, at which meeting the resolutions above mentioned were adopted; that a minority of the members protested against the resolutions; and that they had committed various acts of misconduct mentioned. And he found, as conclusions of law, among other things, that according to the provisions of the by-laws, the debtor members of the society were required to pay the redemption fees upon their mortgages up to the time when the society ceased to exist;

that the society was required to remain in existence until
153 it could pay to each creditor member the sum of $1,000 upon each unappropriated share; that the resolutions of October 23, 1884, were, so far as they assumed to make a disposition of the property and assets of the society, illegal and void; that the dividend of $350 payable to the debtor members, as stated in the resolutions, had not been earned, and was illegal; that the attempt by the individual defendants to appropriate to themselves as debtor members the illegal dividend, and the payment thereof to such debtor members, was a violation of their duty as trustees of the society; that the defendant further violated their duty as trustees of the society in omitting to collect the fines due to the society, in demanding of the various debtor members payment of the amounts claimed to be due upon their mortgages to the society, and omitting to make reports of their proceedings to the society. And he found that the plaintiffs were entitled to judgment declaring the society dissolved, removing the individual defendants as trustees, and appointing a receiver, with the usual powers, to distribute the assets and property of the society, and to execute satisfaction pieces of the mortgages made by members who had paid the amounts which had become due thereon up to October 23, 1884.

Judgment was entered in accordance with the decision, in which a receiver of the property and assets of the society was appointed, who was ordered, upon receiving upon any of the mortgages held by the society the amounts due from the mortgagors for redemption fee, and fines which became due and payable to the society
154 up to and prior to October 23, 1884, to execute to the mortgagors full certificates of satisfaction of said mortgages, and cancel the same and the bonds accompanying them. And that they should pay the two creditor members of the society $1,000 each, with interest from October 23, 1884, deducting, however, any amount which might be owing by them for dues and fines prior to that date. And it was further adjudged that the plaintiffs recover the costs of the action, together with an allowance of $500 against the individual defendants, amounting in all to $677.65. From judgment thus entered the defendants appealed to the general term, where the judgment was modified, and affirmed as modified, and from the judgment of the general term both parties appealed to this court, the plaintiffs from the modification thereof only.

EARL, *J.* (after stating the facts as above):

"This society, at the time of its organization, had no capital, the shares were for $1,000 each, and each member was required to pay a weekly subscription of 50 cents on every share held by him, and the actual capital was to consist of the money thus contributed. The scheme clearly was that these contributions were to continue until the society had a cash capital of $1,000 for each share, and then it was to come to an end. As fast as a sufficient amount was thus contributed, it could be borrowed by the members. Any member could borrow or take $1,000 for every share held by him, which he was required to secure by a real-estate mortgage, upon which 10

21962

per cent. should be paid annually in monthly installments until
155 the whole amount should thus be paid. The member taking what are called 'appropriations,' or, in other words, borrowing money in this way, was not required to pay any interest thereon, but was simply required to pay his weekly dues and his monthly installments. A member might borrow $1,000, if appropriated to him by ballot, or, if not so appropriated, he might obtain that amount by bidding for same, and paying the highest premium offered, and the premium thus paid went into the funds of the society. As, according to the scheme of the society, every member could obtain, on terms of equality with all other members, an appropriation of $1,000 for every share held by him, there was no substantial injustice in allowing the members, who took their appropriations, to have the money without interest. There was no provision in the articles of association, or in the mortgages, which entitled the debtor members to have their mortgages cancelled without payment. Every member was to stand upon an equal footing—the debtor and creditor members. If the scheme was carried out, every member would receive, at the termination of the society, $1,000 for each share held by him; that is, the creditor members would be paid that sum, and the debtor members would receive such a sum of money as, together with the amounts then unpaid upon their mortgages, would make to each of them $1,000 per share. But the scheme was not carried out. The society was continued until the weekly contributions, instead of making a fund of $1,000 for each share, had made a fund of only $442, or even less, and while the society was in that
156 condition, by the act and acquies-ence of all its members, it came to an end, and thus the scheme to some extent was frustrated. It is the theory of the complaint, and the decision of the court below, that the society was dissolved on the 23d day of October, 1884; but the rule of equality must nevertheless prevail among the members. Each member, for each share held by him, was entitled to precisely the same amount in the assets of the society, and such assets should be distributed accordingly. Those who are debtors, if they owed more than their distributive shares of the assets, should pay the balance to the society, and upon such payment should have their mortgages cancelled. If they owed less than their distributive shares, they should have their mortgages cancelled, and receive the balance so as to make them equal with the creditor members. The claim made on behalf of the people, and the five members represented by them in this case, that the three debtor members were entitled to have their mortgages cancelled without payment, and that the creditor members were entitled each to have $1,000, is utterly without any foundation; and the counsel for the defendants has a proper conception of the rights of his clients when he claims that, in winding up the affairs of the society, the trustees are bound to distribute its assets among its members equally, according to their respective shares. The only error, therefore, apparent, in the resolutions under which the individual defendants were proceeding, was in ordering that $700 per share be paid to each of the creditor members, and $350 per share to each of the debtor members.

So far as appears in this record, there was no authority for pay-
157 ing a creditor member a larger distributive share than was paid to a debtor member. It is true that a debtor member may have borrowed money without the payment of interest, but that was his contract, and that was the scheme of the society, and he cannot be required, in the settlement of its affairs, to make any allowance whatever for interest. If he pays, or is charged with the principal due upon his mortgage, he has discharged his whole duty to the society as debtor. In other respects he stands upon a footing of precise equality with the creditor members. Upon the trial the defendants attempted to explain why they made the difference in the payments of $700 to the creditor members and $350 to the debtor members, and, upon objection, they were prohibited from giving the proof.

"But the people, and the five members represented by them, have not complained that the creditor members have been paid or will be paid too much, but their claim is that they have not been paid or offered enough, and they have made no complaint that the amount appropriated for the debtor members is too small, but their claim is that they ought not to be paid anything, and that their mortgages should be absolutely satisfied. It may be that facts exist which would now preclude them from objecting to the appropriation and distribution which has been provided for in the resolutions, and made in pursuance thereof. The three debtor members still remaining who are represented by the plaintiffs in this action received their appropriations but a few months previous
158 to the passage of the resolutions, and they have paid upon their mortgages but a small percentage, and yet their claim is that because the society has come to an end, although prematurely, they are absolutely entitled to have their mortgages cancelled without payment. No claim could be more preposterous, and there is no justification for it in the law or in the articles of association of the society.

"A careful scrutiny of this case fails to disclose to us any proof of any fraud or misconduct on the part of these defendants. With the exception of the discrimination which they made between the debtor and creditor members, of which no one has complained, they were proceeding to wind up the society in precise accordance with the law applicable to the facts. It does not appear that they had taken a dollar to which they were not entitled, or that they had paid any one a dollar to which he was not entitled. They had remitted or failed to collect some fines, but according to the practice of the society, and within a reasonable discretion vested in the trustees or managers of the society, they must have had power to remit and condone fines. They had power also, to settle with the defendant Lowe, who had bought real estate of the society, and given back a mortgage for the purchase price, which he was unable to pay. He offered to surrender the property if the society would take it, and the trustees, in the exercise of a reasonable discretion, made a deduction of $700 from his mortgage in case he would pay the balance and thus reduce his indebtedness to the actual value of the property

Nothing whatever was lost to the society, so far as the case
159 discloses, which could have been saved by any other proceed-
ure. Therefore, assuming that the attorney general in the name of the people could commence and maintain this action, there does not seem to have been, so far as this record discloses, the least ground for doing so. No public right or interest was involved, and no interest whatever except those of the five members, who were all claiming more than they were entitled to, and making charges of misconduct against trustees which, so far as the record discloses, had not the least foundation in fact. The litigation has been most disastrous, entailing large costs and expenses, not only in this action, but by reason of other actions commenced in the name of the receiver, in all probability consuming and wasting most, if not all the remaining assets of the society. These views lead to a reversal of the judgment."

Exhibit X.

In the case of Concordia Savings and Aid Association against Read *et al.*, reported in the 93 N. Y., at page 474, the action was brought to foreclose a mortgage executed by defendant Meier to the plaintiff to secure a bond conditioned for the payment of the sum of $1,850, as follows:—$3.75 contribution, and $2.25 interest, each and every week during the existence of the association, and also all dues, fines, and penalties. The mortgage provided that if the contributions, interest, dues, and penalties specified should remain due and unpaid for three months, then the whole sum, with
interest, and all dues, fines and penalties owing by Meier to
160 the association should be deemed due and might be collected.

The plaintiff in this case was incorporated as a mutual loan and accumulating fund association under an act of the legislature of the State of New York, passed April 10th, 1851, and it was shown that Meier was a member of the corporation. Article seven of the constitution provides that "every member receiving a loan from the association binds himself to pay the weekly contribution of twenty-five cents and fifteen cents interest for every share so received, and for such time as shall be required to pay the holder of every share $125, including the premium allowed by such shareholder;" and article 23 provided that if each and every member should have received for each and every share the sum of $125, deducting therefrom the premium paid by his own consent, then the association should cease and determine, and all mortgages and other securities should be discharged.

The claim on behalf of the defendant was that Meier was bound to pay upon his bond and mortgage his weekly dues and interest only until the association had received money enough to redeem all the outstanding shares, and that it was incumbent upon the plaintiff to prove that there were shares outstanding and the amount required to redeem, and the court said, "We think the proof was *prima facie* sufficient.

"The plaintiff was organized April 1st, 1876, and the number of

its shares was limited to one thousand, at $125 each. A
161 number of persons signed the articles of association, and they must have been shareholders. The association had received money enough from the dues of its members to make the advance to Meier, secured by his bond and mortgage in August thereafter, and hence there must have been a large number of members who paid dues upon shares held by them. To furnish a fund for the redemption of shares, each member paid for each share held by him the weekly sum of twenty-five cents. Thus there would be paid upon each share $13 every year, and if nothing but the dues were paid by members it would take more than nine years to accumulate funds sufficient to redeem all the shares. If the interest, premiums, fines, and penalties received amounted to more than sufficient to pay the losses and expenses of the association, the shares could be redeemed in a less time. Here Meier stopped making payments on his bond and mortgage, or as a member of the association, on the 11th day of June, 1877, less than one year after he obtained the money, and this suit for the foreclosure of the mortgage was commenced in July, 1878, less than two years after he obtained the money. Hence, by no possibility could money enough to redeem the shares have been received by the association from its members in June, 1877, or July, 1878. The evidence was sufficient to throw upon the defendant the burden of showing that all the outstanding shares had in some way been redeemed so as to entitle Meier to have the mortgage discharged.

162 "It matters not whether the moneys secured by the bond and mortgage be called, as it is in the constitution of the company, a loan to Meier, or simply an advance upon his shares. The bond and mortgage were given to secure the repayment of the money in the manner and upon the terms therein mentioned, and it is clear that the money became payable. No material error was committed by the trial court in the computation of the amount due upon the mortgage. The mortgage was given to secure the payment of the precise sum advanced or loaned to Meier, to wit, $1,875. It is true that at the time the mortgage was given, Meier did not carry away with him the full sum of $1,875. The constitution of the association provided that in case there are several members applying for a loan at the same time, said loan shall be given to the member paying the highest premium therefor to the benefit of the association. The taking of a premium in such case is sanctioned by the act of 1851, as amended by chapter 564 of the Laws of 1875, and does not render the loan usurious.

"Meier paid for this loan a premium of $630, and that sum was paid out of the $1,875, and the balance only was actually paid to him, but the whole sum was loaned or advanced, and out of it he paid the premium which went into the treasury of the association for the benefit of all the shareholders, Meier included. The scheme
163 of the association, as embodied in the law of its creation and in the bond and mortgage, was that this sum could be paid back by weekly dues of 25 cents per shares to apply on the principal, and 15 cents per share for interest, and if these payments were

made, also all fines and penalties imposed upon him as a member, then his bond and mortgage were to be void, and all payments were in any event to cease so soon as enough money had been contributed by all the members to redeem all the shares, but in order to have the benefit of these gradual, deferred payments, it was incumbent upon Meier to make them as they fell due and to remain a member of the association by the payment of his dues, interest, fines and penalties. If he did not make these payments, then he was to pay back the money which was advanced to him, and so it is provided in the bond and mortgage.

"This is not a case where a larger sum is made payable in consequence of the non-payment of a smaller sum, and payment of a large sum is not imposed as a penalty. But this is a case where the whole of a specified sum becomes due because the partial payments are not made as stipulated, and the principles of law which authorize courts of equity sometimes to relieve from forfeitures do not apply to such a case as this.

"It is stipulated in the mortgage that if the contributions, the interest, dues or penalties herein specified shall at any time remain due and unpaid for the space of three months, then and in
164 that case the whole sum of $1,875 and the interest due thereon, and all dues, fines and penalties owing by said Meier to said association by the terms of the constitution, rules and regulations thereof, shall be deemed due and may be collected. Therefore, the trial court did not err in taking the sum of $1,875 as the basis of its calculation, and no substantial error was committed in arriving at the sum for which the judgment was ordered, and therefore the judgment should be affirmed, with costs."

Reply.

L. S. WELLING recalled.

Direct examination:

Q. You stated this morning that you were uncertain whether you had paid any fines on this loan or not?

Ans. Yes.

Q. Have you since investigated the matter?

Ans. Yes.

Q. With what result?

Ans. I found that I had never paid them a fine—never have defaulted on this loan at all. Every time it was due I paid them.

Cross-examination:

Q. What did you mean when you stated to me that you had paid ten dollars in fines on some loans?

Ans. My wife, Mrs. Welling, borrowed a sum of money and I paid on that loan.

165 Q. On a loan of this defendant?

Ans. Yes.

Q. The Eastern Building & Loan Association?

Ans. Yes, but not in this case.

Q. But you did pay for your wife ten dollars fine in a case where she had borrowed money from the association, and where the papers were identically similar to these?

Ans. Yes.

Redirect examination:

Q. I hand the witnes a placard and ask him if he ever saw it before?

Ans. Yes.

Q. Whose name is at the bottom of it?

Objected to.

Q. Was this part of the literature sent out to you?

Ans. Yes.

Q. As agent?

Ans. As their agent.

Objected to on the ground that it is not competent, but irrelevant, inadmissible and no part of the contract whatever. Objection overruled. Exception noted. Defendant objects on the further ground that there is no evidence that the Eastern Building & Loan Association published it.

The COURT: He has testified that it was sent to him by the company. Objection overruled. Exception noted.

Recross-examination:

Q. When did you get it?

Ans. Some time in '91.

166 Q. When did you get it?

Ans. About January, 1891. January or February.

Q. When?

Ans. I know that much about it. I don't know when I got it.

Q. When did you get it?

Ans. I don't know.

Q. You don't know?

Ans. I don't know what day I got it.

Q. If you don't know when you got it, it is possible you didn't get it until after April, 1891?

Ans. I couldn't say whether I got it before or after that.

Q. You have no recollection on that subject?

Ans. No, sir.

Plaintiff introduced placard marked Exhibit Y.

The testimony ended here.

EXHIBIT Y.

Eastern Building and Loan Association of Syracuse, N. Y.

America's leading building association.

(Par value of shares, $100 each.)

(Organized under the laws of the State of New York.)

Officers and Directors.

H. H. Loomis, president.
D. H. Murray, vice-president.
Jno. J. W. Reynolds, sec'y and gen'l manager.
Lucius M. Kinne, treasurer.
W. H. Emery, assistant secretary.
M. H. Bunn, assistant general manager.
Chas. A. Pooler, sup't of agencies.
Alex. H. Hubbes, manager loan department.
A. B. Kinne, director.
D. A. Pierce, attorney.

167 Assets inserted here.

For the investor.

This association issues three classes of certificates, designated as instalment, paid up and fully paid. All of which are guaranteed to mature in 6½ years. Amply secured by first mortgages on real estate. Paid-up stock doubles in 6½ years. Fully paid certificates; guaranteed quarterly dividends, 7 per cent. per annum.

For the borrower.

This association has no auction sales, no bidding for loans. And a definite time for repaying a loan.

Liabilities inserted here.

The only association making a contract definite in every particular.

Withdrawal value clearly stated, and never less than the amount paid in instalments.

Stock matures in 78 months.

Borrowers know the exact amount required to cancel their mortgage.

No auction system. No lapses. No forfeitures.

No loans made on farm property, churches, schools, summer hotels or resorts, mills, factories or any property designed for other than general purporses.

For full particulars, to subscribe for shares, apply to

L. S. WELLING,
Darlington, S. C.

12—190

168 The attorneys for the plaintiffs and defendant admit the same state of facts, including the laws of the State of New York, which were introduced into evidence, and agree as there is no fact to be found by the jury, that his honor can direct a verdict for the plaintiff or defendant in accordance with his construction of the written contract under the law. Plaintiffs' attorneys request his honor to direct the jury to return a verdict in favor of the plaintiffs.

Mr. ELLIOTT: I will ask your honor to direct the jury to return a verdict in favor of the defendant on each or all of the following grounds:

1st. That the Eastern Building and Loan Association was incorporated under the chapter 122 of the Laws of 1851 of the State of New York and the acts amendatory thereof, and as the plaintiffs contracted with the defendant, then they are bound by such laws and are not exempt from making the monthly or other stated payments, provided in the articles of association, upon the ground that by reason of losses or otherwise the association has continued longer than was originally anticipated, whereby the payments made on such shares may amount to more than the amount originally advanced with legal interest thereon.

2nd. That the supreme court of the State of New York in December, 1895, in the case of O'Malley *vs.* The People's Building, Loan & Savings Association, decided that a corporation charter under said chapter 122 of the Laws of 1851 of the State New York and the acts amendatory thereof, did not possess the power or authority
169 to issue a certificate specifying a fixed maturity period, and that such a clause should be construed as an estimated period of maturity.

3rd. That the payment by plaintiffs of the sum represented by the seventy-eight notes to the defendants does not repay the amount of plaintiffs' loan to defendant, unless such payments and the earnings of the defendant had matured the plaintiffs' stock.

4th. That the plaintiffs' indebtedness upon their loan, secured from defendant will not be fully paid, until the shares of stock held by the plaintiffs reach par value, or by reason of plaintiffs' payments into the loan fund of defendant and the dividends credited thereto.

5th. That the plaintiffs are not entitled to a cancellation of their mortgage until such time as their stock matures and reaches the par value of $100 per share.

6th. That until the amounts paid by the plaintiffs into the loan fund of defendant, augmented by dividends credited thereto, matures plaintiffs' stock, the plaintiff- *is* not entitled to a discharge of their mortgage.

7th. That defendant association was incorporated under chapter 122 of the Laws of 1851, of the State of New York, and the acts amendatory thereof, and that the plaintiffs are members of said association, bound by its articles of incorporation and its by-laws, rules and regulations and the defendant being, under said laws, a

mutual corporation, the plaintiffs, as members, are bound to sustain their *pro rata* share of any losses the association may suffer as well as to participate in dividends declared from the earnings.

170 The COURT: In ruling upon the legal question as to whether or not the mortgage in issue had been paid and should be marked satisfied, Judge Watts said:

The question came up before me whether this mortgage was cancelled. If it was cancelled, it was the duty of the holder of the mortgage to cancel it in the register's office, in this county, within three months, if not the penalty under the statutes attaches.

Now, there are a great many interesting points in this case. It has been most ably argued on both sides. I have listened to it with a great deal of pleasure, as it was something new to me. I am frank to say that I know very little about building & loan associations. I have had very few cases before me since I have been on the bench and never had a case while at the bar. For a short time I owned some stock in one, but I never knew anything about it, and I got out of it as quick as I could.

But my views in the case are these—and in announcing them I do not think it is necessary for me to consider all the points which have been so ably argued in this case.

The question here is: What was this mortgage given to secure? A mortgage is a pledge to pay certain things—the pledging of certain property to pay certain things incorporated in the mortgage—a bond or note, something of this kind. My construction of this mortgage is this: The agreement between the parties in that mortgage was that these plaintiffs executed seventy-eight notes to

171 be paid at certain times. That was the evidence of the debt.

The security to pay those seventy-eight notes was the real estate described in this mortgage. When they mortgaged their property it was not to secure fifty shares of building and loan stock. There was no provision in that mortgage that they were to continue to pay their monthly assessments thereon until the fifty shares of stock had matured the value of one hundred dollars each; but they simply pledged their property to pay the seventy-eight notes as they fell due with any fines that might be due under the by-laws.

Now, the sole question is, Have they paid those seventy-eight notes? If they have been paid, the lien of this mortgage has been cancelled—extinguished. It is admitted that seventy-five of these notes have been paid, and of the other three tender was made and the offer refused.

I hold under the plain terms of this mortgage that when these plaintiffs paid the seventy-five notes and tendered the payment of the other three notes, and the defendant refused to accept them that that extinguished the lien of this mortgage; and this mortgage should be marked and cancelled. And the undisputed testimony also is that the fees of the register was tendered and the defendants refused to mark the mortgage satisfied.

I therefore hold as a matter of law that the penalty attaches in favor of the plaintiffs against the defendant.

The mortgage says that these notes were to be paid in accordance

with the by-laws of the association. That meant they were to be paid at maturity, as I take it, and if they were not paid the
172 fines and penalties provided by the by-laws were to be attached and to become a part of these notes.

I hold that the mortgage is cancelled and that when the plaintiffs paid the seventy-five notes and tendered the payment of the other three notes that it was the duty of the association to turn that mortgage over, and when they failed to do that then the plaintiffs had the right to wait three months, (I believe is the statute) and when they tendered them the fees, it was their duty to mark it satisfied; and if they did not do that they are bound to pay up the penalty as prescribed by the statute.

I don't think it is necessary in this case to pass upon the point as to whether or not Welling & Bonnoitt are still members of this association. I am satisfied under the testimony that the mortgage is dead. I presume that this case will, of course, go to the supreme court, and they will settle the law fully. I am sorry we have not a decision of our own court with reference to a case like this.

But those are my views and I so hold.

These defendants have asked me to direct a verdict in their favor on the ground that there is no dispute between them on the facts of the case; and that is a question of law to be construed by me. The plaintiffs also ask for a verdict to be directed in their favor. Under the undisputed facts in the case I think I have the right to direct a verdict in favor of the plaintiffs. I refuse to direct a verdict for the defendant as requested.

173 *Charge.*

Mr. FOREMAN AND GENTLEMEN: Both sides in this case request me to construe the law in this case.

The attorneys for the plaintiff- and for the defendant admit the same state of facts. They have agreed that upon my construction of the law of the case I should direct a verdict for the plaintiffs or for the defendant just as I construe the law. I have construed the law here in favor of the plaintiffs, and you will therefore write a verdict for the amount they claim here. There is no dispute here as to the facts. It has come down to a point of law, and I decide the law in favor of the plaintiffs. I therefore direct you to find a verdict for the plaintiff- in the amount which they have sued for.

The form of your verdict will be:

"We find for the plaintiffs in the sum of eighteen hundred dollars" and sign your name as foreman.

Verdict for plaintiff- for the sum of eighteen hundred dollars and judgment entered up thereon December 22, 1898.

Written notice of intention to appeal duly given.

Order.

The first of the above-named cases having come on for trial, and having resulted in a verdict in favor of the plaintiffs; and there-

upon each of the subsequently named cases having been
174 called for trial, and it being admitted that all of said cases were similar and involved the same issues and questions in all respects, and a verdict in each of said cases having been taken with the stipulation, by all the counsel made in open court, that in case of appeal to the supreme court the same shall be heard on the pleadings, testimony and record in the first of said named cases, and that the verdict and judgment in each of said cases shall abide the result of said appeal.

R. C. WATTS,
Presiding Judge.

Dec. 10, 1898.

Exceptions.

1. That his honor erred in overruling the oral demurrer interposed to the complaint, on the following grounds:

"That the complaint does not state facts sufficient to constitute a cause of action in this; that the complaint does not allege the law of the State of New York, governing the mortgage contract, and which is a part and parcel of the mortgage contract."

2. That his honor erred in overruling the motion made for nonsuit on the following grounds:

"That there is no evidence that the mortgage was paid according to the terms and provisions of the by-laws of the association and according to the laws of the State of New York, that this contract is to be construed according to the laws of New York, and
175 there is no evidence before the court showing what the laws of New York are; further upon all the evidence of proof in the case there is nothing to show a compliance and payment with the terms of the contract; and further that the only evidence of compliance with the contract is that seventy-five notes were paid and three others offered to be paid, and that the premises were kept insured and fines paid."

3. That his honor erred in refusing to direct the jury to find a verdict for the defendant, as requested, as follows:

"That the Eastern Building & Loan Association was incorporated under the chapter 122 of the Laws of 1851 of the State of New York and the acts amendatory thereof, and as the plaintiffs contracted with the defendant, then they are bound by such laws and are not exempt from making the monthly or other stated payments, provided in the articles of association, upon the ground that by reason of losses or otherwise the association has continued longer than was originally anticipated, whereby the payments made on such shares may amount to more than the amount originally advanced with legal interest thereon."

4. That his honor erred in refusing to direct the jury to find a verdict for the defendant, as requested, as follows:

"That the supreme court of the State of New York in December, 1895, in the case of O'Malley *vs.* The People's Building, Loan and Savings Association, decided that a corporation chartered
176 under said chapter 122 of the Laws of 1851 of the State of New York and the acts amendatory thereof, did not possess

the power or authority to issue a certificate specifying a fixed maturity period, and that such a clause should be construed as an estimated period of maturity."

5. That his honor erred in refusing to direct the jury to find a verdict for the defendant, as requested, as follows:

"That the payment by plaintiffs of the sum represented by the seventy-eight notes to the defendant does not repay the amount of plaintiffs' loan to defendant, unless such payments and the earnings of the defendant had matured the plaintiffs' stock."

6. That his honor erred in refusing to direct the jury to find a verdict for the defendant, as requested, as follows:

"That the plaintiffs' indebtedness upon their loan, secured from defendant will not be fully paid until the shares of stock held by the plaintiffs reach par value, or by reason of plaintiffs' payments into the loan fund of defendant and the dividends credited thereto."

7. That his honor erred in refusing to direct the jury to find a verdict for the defendant, as requested, as follows:

"That the plaintiffs are not entitled to a cancellation of their mortgage until such time as their stock matures and reaches the par value of $100 per share."

177 8. That his honor erred in refusing to direct the jury to find a verdict for the defendant, as requested, as follows:

"That until the amounts paid by the plaintiffs into the loan fund of defendant, augmented by dividends credited thereto, matures plaintiffs' stock, the plaintiff- *is* not entitled to a discharge of their mortgage."

9. That his honor erred in refusing to direct the jury to find a verdict for the defendant, as requested, as follows:

"That defendant association was incorporated under chapter 122 of the Laws of 1851, of the State of New York, and the acts amendatory thereof, and that the plaintiffs are members of said association, bound by its articles of incorporation and its by-laws, rules and regulations and the defendant being, under said laws, a mutual corporation, the plaintiffs, as members, are bound to sustain their *pro rata* share of any losses the association may suffer as well as to participate in dividends declared from the earnings."

10. That his honor erred in not deciding the question of the plaintiffs' membership in said defendant association as raised by the pleadings.

11. That his honor erred in directing the jury to find a verdict in favor of the plaintiffs, thereby holding, as matter of law, that according to the terms and conditions of the written contract, and the laws of New York, that upon the payment of the seventy-eight notes the mortgage contract was cancelled, when the sum

178 represented by such payments and the earnings of the defendant association had not matured the plaintiffs' stock.

12. That his honor erred in sustaining the plea of payment and on that ground directed the jury to find for the plaintiff.

THE STATE OF SOUTH CAROLINA,
County of Darlington.

In the Supreme Court.

WELLING & BONNOITT and Others, Plaintiffs, Respondents,
against
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y.,
Defendants, Appellants.

To T. H. Spain, Esq., attorney for defendants, appellants:

You will please take notice that the respondents in each of the above cases will ask the supreme court, in case it shall find itself unable to sustain the judgments of the circuit court upon the grounds on which they were rested by his honor, Judge Watts, and upon his construction of the contracts, to wit: the notes and mortgages of the respondents, nevertheless to affirm the said judgments of the circuit court upon the following grounds:

Because it is respectfully submitted:

179 I. That the amounts secured by the respective mortgages of the respondents were fixed and evidenced by the notes executed by them and set forth in their mortgages, independent of the maturity of the stock withdrawn and surrendered at the time of the loans.

II. No relationship of mutuality, such as claimed, existed between these borrowers and the association; when their stock was withdrawn they ceased to be stockholders, and when the association loaned them its funds the relation of debtor and creditor was at once established.

III. Because, even if the relationship between its stockholders and the said association was otherwise that of mutuality or of partnership, yet by the withdrawal and surrender of their certificates of stock written and signed upon the backs thereof required as a condition precedent to granting the loans, respondent's membership in said association ceased, and such relationship likewise ended with such withdrawal.

IV. Because said contracts, to wit: the notes and mortgages in question payable in a definite period and evidenced by fixed notes were not *ultra vires* of the said defendant corporation.

V. Because said corporation is estopped from interposing the plea of *ultra vires*, or that the relationship of mutuality such as claimed exists between these respondents and the said association:

a. It represented to these respondents that it possessed the power to make the contracts in question.

180 *b.* Because it held out that it was the only building and loan association making definite contracts, and that the borrower knew exactly how much was required to cancel his mortgage, circulated its literature to the same effect, made the contracts here accordingly, taking a definite number of notes and mortgages to secure them, and required respondents to withdraw their stock, as evi-

denced by their signed writing in pursuance of the plan so adopted in every case here in question.

c. Because, pursuant to the terms required, respondents withdrew and surrendered their certificates of stock, gave each their definite and fixed notes and mortgages to secure the same, and have fully performed their contracts by payment of the amounts required thereunder and which their said mortgages were given to secure.

VI. After withdrawal of stock and loans made, respondents were either shareholders or they were not. If it be held that the respondents' membership in the association did not cease by reason of their withdrawal and surrender of stock, or that their relation to the said association was still one of mutuality or of partnership by reason of their being still shareholders therein, said notes and mortgages are to be construed and governed by the laws of South Carolina, because it is provided in art. 7 of the conditions of certificates of shares that the payment of instalments upon said shares were to be paid to an authorized agent or sent to the home office, and all payments by the respondents, according to the undisputed testimony, were made to the authorized agent of the association at Dar-
181 lington, in accordance with its consent and direction; hence the contracts provided for performance in South Carolina, and were actually performed thereunder, at Darlington in this State.

VII. Because if construed and governed by the laws of New York, there was nothing in the testimony, either of statutory or case law, which required or justified these definite contracts to be held indefinite or indeterminate as to the amounts secured to be paid by the mortgages, or to create for the parties other and further notes neither made nor contemplated by them, and not secured by their mortgages, whether these be the kind of contracts usually made by building and loan associations or not.

VIII. Because these contracts should be construed and governed by the laws of South Carolina, but whether construed and governed by the laws of this State and the decisions of our court or by settled principles of law as applied to their terms and conditions, when respondents paid and tendered the full amounts of their respective notes as they matured, their mortgages were discharged, and should on demand and tender of fees of office have been marked satisfied.

W. F. DARGAN,
Of Counsel for Welling & Bonnoitt and H. M. Willcox.
WOODS & MACFARLAN,
Attorneys for H. A. Edwards and K. M. Oakes et al.
J. J. WARD,
Attorney for Welling & Bonnoitt, C. E. Ward, and A. W. Welling.

182 We hereby agree that the foregoing shall constitute the case for the supreme court on appeal in the above-stated actions, and also the return required by law.

CHESTER M. ELLIOTT,
T. H. SPAIN,
Appellant's Attorneys.

W. F. DARGAN,
Of Counsel for Welling & Bonnoitt and for H. M. Willcox, Respondents.

WOODS & MACFARLAN,
Attorneys for Respondents H. A. Edwards and K. M. Oakes et al.

J. J. WARD,
Attorney for Welling & Bonnoitt, C. E. Ward, and A. W. Welling.

March 27, 1899.

It is hereby certified that U. R. Brooks was, on the day of the annexed certificate and attestation, clerk of the supreme court of South Carolina and duly authorized to make the same; that such clerk is the proper officer to make such certificate and attestation, and that the same are in due form; that the seal affixed to said certificate is the seal of office of the clerk of the supreme court of South Carolina; that the signature thereto of the said clerk is in his own proper handwriting and is genuine; and, further, that the clerk is the custodian of the records so certified and attested and custodian of the seal of said court hereunto affixed, and that full faith and credit may and ought to be given to his official acts.

In testimony whereof the seal of the court is hereunto affixed.

Witness my hand, at Columbia, the 10th day of January, in the year of our Lord one thousand nine hundred.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS, *Clerk.*

183 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, April Term, 1900, Fourth Circuit, Darlington County.

WELLING and BONNOITT, Plaintiffs, Respondents,
against
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y., Defendant, Appellant.

NOVEMBER 28, 1899.

The opinion of the court was delivered by—

Mr. Justice GARY:

This action was brought for the purpose of recovering the penalty under sections 1894–1895 of the Revised Statutes, for not entering satisfaction in the proper office on the mortgage executed by the

plaintiffs in favor of the defendant. The complaint and the defense set out in the fourth paragraph of the answer, state the facts out of which the controversy has arisen. That part of the mortgage which is material to the consideration of the questions raised by the exceptions is as follows: "This grant is intended as a security for the payment of the sum of $6,175.60, the same being the principal, interest and premium of a loan from said association, which said loan was made pursuant to and accepted under the provisions of the by-laws of said association, and which said by-laws have been read by the mortgagors and are hereby made a part of this contract,
which said loan is evidenced and secured to be paid by seventy-
184 eight certain promissory notes of even date herewith, executed by the said Lawrence S. Welling and Marion Bonnoitt, payable to the said association, at its office in Syracuse, as follows: one of each of said notes is to be paid on or before the last Saturday of each and every month until all of the seventy-eight notes are fully paid, together with interest on each of said notes after maturity at the rate of six per cent. per annum, payable semi-annually until said notes are fully paid. And the said mortgagors, for themselves and their heirs, executors, administrators and assigns, hereby covenant * * * and agree * * * with the party of the second part, its successors and assigns, to pay said principal, interest and premiums at maturity, and the interest accruing on said notes after maturity, and all fines and penalties that may be imposed pursuant to the provisions of the constitution and by-laws of said association, and also keep and perform all promises and engagements made and entered into with said association, according to the true intent and meaning of its by-laws and articles of association." The plaintiffs introduced in evidence a circular letter entitled "The definite contract plan," which among other things contained the following:

"For the investor.—This association issues three classes of certificates, designated as instalment, paid up, and fully paid. All of which are guaranteed to mature in 6½ years. Amply secured by first mortgages on real estate. Paid-up stock doubles in 6½ years; fully paid certificates; guaranteed quarterly dividends, seven per cent. per annum.

"For the borrower.—This association has no auction sales, no bidding for loans, and a definite time for repaying a loan.

"Liabilities inserted here.—The only association making a contract definite in every particular; withdrawal value clearly stated, and never less than the amount paid in instalments.

"Stock matures in 78 months.—Borrowers know the exact
185 amount required to cancel their mortgage. No auction system, no lapses, no forfeitures."

The plaintiffs also introduced in evidence another circular which, among other things, contained the following statement:

"Illustration.—Showing costs and profits to the investor of ten shares of $1,000 in six and one-half years, at time of maturity:

He pays a membership fee of $1.00 per share.....	$10 00
He pays monthly instalments of $7.50 per month for 78 months, $7.50 x 78.....	585 00
Total amount invested...	$595 00
He receives in cash at maturity	1,000 00
His net gain is.....	$405 00

Illustration.—Showing the cost of $1,000 loan on ten shares of stock for six and one-half years. He bids ten per cent. ($100), which is deducted from the $1,000 borrowed:

He pays $15.84 per month for 78 months.....	$1,235 52
He paid for stock	10 00
Total	$1,245 52

It will be seen from the above that $345.52 is the amount paid in excess of the actual amount received on loan. This for the use of the money for six and one-half years. Thus the borrower pays less than six per cent. per annum."

The first and main question that will be considered is whether there is error on the part of the circuit judge in his construction of the contract. In the case of Williamson *v.* B. & L. Association, 54 S. C., 582, the court says: "The agreement alleged in the plaintiff's affidavit and the by-laws present schemes for maturing the shares of stock that are radically different. The provisions of the said agreement and of the by-laws for maturing the shares of stock are repugnant and in irreconcilable conflict. The question is
186 thus presented for this court to decide which shall prevail. * * * It is a well-known fact that comparatively few people that become shareholders in such associations are familiar with their by-laws. They rely upon the honesty, integrity and fair dealing of those who manage the affairs of the association. It is also a well-known fact that the by-laws are frequently intricate, and almost unintelligible to the average shareholder, and those in charge of the affairs of the association usually become exceedingly expert in the interpretation of them, thus giving the association a decided advantage in the way of information over the shareholders. Public policy, in order to prevent the perpetration of fraud, and to prevent just such a case as we now have before us, in which the plaintiff alleges that he was induced by the express promises and the literature of the defendant to part with his money in purchasing its shares of stock, demands that the defendant should not be allowed to elect whether it will be bound by its by-laws or its express agreement as to the time when the shares would mature." * * *

The circular will next receive consideration. The construction of a written instrument is a question of law to be decided by the court. This court has the right, therefore, to construe the circular. It unquestionably shows that the defendant interpreted the contract to mean that the shares would mature at a fixed and definite period.

It is a well-settled principle that when the construction to be given a contract is rendered doubtful by the language thereof, the interpretation of the contract by the parties themselves is entitled to great weight. Chicago *v.* Sheldon, 9 Wall., 50; Railroad Co. *v.* Trimble, 10 Wall., 367; Steinbach *v.* Stewart, 11 Wall., 566; Lowber *v.* Bangs, 2 Wall., 728. Our conclusion as to the proper construction of the contract is in harmony with the interpretation placed upon it by the defendant, and this is an additional reason why the by-laws should not prevail against the express agreement fixing the time when the shares would mature. From the foregoing it will be seen that the express agreement set forth in
187 the mortgage and the by-laws of the association are inconsistent and in irreconcilable conflict. As they are repugnant, the express agreement, and not the by-laws, must prevail.

The appellant, however, contends that the said agreement and the by-laws are to be construed under the laws of New York. In the case of Gooch *v.* Faucette (N. C.), 39 L. R. A., 835, the court uses this language in speaking of comity: "This is not a right of either State, but is permitted and accepted by the States from mutual interest and convenience, from a sense of the inconvenience which would otherwise result, and from a moral necessity to do justice in order that justice may be done in return. Without this rule, the law of one State can have no force in another. But there is no comity among the courts of the different States. They administer the law in the same way and by the same reasoning by which all other principles of the municipal law are ascertained and guided. It is the duty of every State to look to the interests of its own subjects. Comity being voluntary and not obligatory, cannot supercede all discretion on the subject. Vattel, at page 61, says: 'It belongs exclusively to each nation (State) to form its own judgment of what it prescribes to it—what is proper or improper for it to do; and it will examine and determine what it can do for another, without neglecting the duty which it owes to itself.' No State can demand the recognition of its laws in another, if they are deemed by the latter to be impolitic or unjust, of bad morals, or injurious to the rights and interests of its citizens, or against its public policy. In Bank of Augusta *v.* Earle, 38 U. S.; 13 Pet., 519, 589; 10 Led., 274, 308, Chief Justice Taney said: 'And courts of justice have always expounded and executed them (contracts) according to the laws of the place in which they were made, provided that law was not repugnant to the laws or policy of their own country. The comity thus extended to other nations is no impeachment of sovereignty. It is the voluntary act of the nation by which it is offered,
188 and is inadmissible when contrary to its policy or prejudicial to its interests.' * * * Story Confl., p. 32, section 38, says: 'In the silence of any positive rule * * * courts of justice presume the tacit adoption of them (foreign laws) by their own government, unless they are repugnant to its policy or prejudicial to its interests.' Many other authorities to the same effect might be cited." In the case of Pope *v.* Hanke (Ill.), 28 L. R. A., 568, the court says: "Comity between different States does not require a law of one

State to be executed in another, when it would be against the policy of the latter State. No State is bound to recognize or enforce contracts which are injurious to the welfare of its people, or which are in violation of its own laws" (citing a number of authorities). It thus appears that the State is not compelled from mere comity to recognize the laws of New York, for the reasons stated. The agreement herein is, in our opinion, injurious to the interests of our people, and whatever may be the laws of New York, we do not think they should be enforced in this State.

It is the judgment of this court, that the judgment of the circuit court be affirmed.

189 *Judgment of the Supreme Court.*

STATE OF SOUTH CAROLINA,
Darlington County.

In the Supreme Court.

LAWRENCE S. WELLING ET AL., Respondents,
vs.
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y., Appellant.

Appeal from circuit court.

T. H. Spain, for appellant.
W. F. Dargan, J. J. Ward, Woods & Macfarlan, G. G. Thompson, Willcox & Willcox, for respondents.

It is the judgment of this court, that the judgment of the circuit court be affirmed.

By the court:
[L. S.] U. R. BROOKS, *Clerk.*

True copy.
Test:
[L. S.] U. R. BROOKS, *Clerk.*

Remittitur to circuit court for Darlington county, 9th December, 1899.

190 THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

LAWRENCE S. WELLING and MARION BONNOITT, Plaintiffs, Respondents,
against
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y., Defendant, Appellant, and Five Other Plaintiffs, Respondents, against said Defendant, Appellant.

Now comes the defendant, appellant Eastern Building and Loan Association of Syracuse, N. Y., by its attorneys, and moves and peti-

tions this honorable court for a rehearing in this case and for a re-argument thereof, and respectfully shows to the court that there are divers manifest errors of law in the decision and opinion of the court herein, and your petitioner especially shows to the court that the decision, opinion and judgment in this case are in violation and contravention of the Constitution of the United States, and have the effect of impairing the obligation of a contract, depriving petitioner of its property without due process of law, and denying to it
191 the equal protection of the laws of this State, and in support of this motion and petition, and of the grounds thereof just stated, your petitioner respectfully submits that—

I.

It appears from the face of the record in this case and especially from the complaint of the plaintiffs, respondents and the answer of the defendant, appellant, and particularly from the fourth paragraph of said answer (Record, p. 7, fol. 19; p. 11, fol. 32) that defendant, appellant is a domestic corporation of the State of New York, organized and existing under the laws of said State, and having its corporate situs therein, and that the plaintiffs and each of them are and were at the times mentioned in the complaint and the answer aforesaid, members of and stockholders in appellant corporation.

II.

It also appears from the face of the record in this case that the only question in controversy or judicially determined in this case, either by the court below, or by this court, was and is as to the construction, meaning and effect of the contract between plaintiffs, respondents as "advanced" or borrowing stockholders, and the appellant corporation, and of the mortgage executed by the plaintiffs as "advanced" or borrowing members of appellant, a foreign corporation, and the effect upon such contract and mortgage, and upon appellant corporation, of sections 1894 and 1895 of the Revised Statutes of South Carolina of 1893.

192 III.

It also appears from the opinion and judgment of the court below, and from the opinion rendered by this court affirming the judgment of the court below, that said law of 1893, as embodied in said sections of said Revised Statutes, was held applicable upon the facts shown by the record herein, to the defendant, appellant, and that under said law the full penalty thereof has been inflicted and imposed upon your petitioner, judgment therefor rendered in the court below, and that said judgment, by the opinion rendered in this court, stands affirmed (Record, p. 170, fol. 508; p. 173, fol. 519).

IV.

It also appears from the opinion of this court and from the opinion and judgment of the court below, that said sections 1894 and 1895 of the Revised Statutes of South Carolina of 1893 were applied

to and enforced against your petitioner, defendant, appellant, and judgment rendered against your petitioner in contravention and violation of the Constitution of the United States, and the fourteenth amendment thereto, in the following respects, to wit:

(a.) That by the answer of your petitioner, defendant below and appellant in this court, and particularly by the fourth paragraph of said answer (Record, p. 8, fol. 23; p. 11, fol. 32), your petitioner stated, plead and relied upon a contract entered into in the State of New York, to be performed in that State subject to the laws
193 of that State, and legal and valid thereunder, between your petitioner and plaintiffs, respondents herein, whereby plaintiffs, respondents, at the times set forth in said paragraph of said answer, became stockholders in and members of your petitioner, which then was and now is, as alleged in said answer and shown by the evidence in this case, a corporation, duly organized and existing under and pursuant to the laws of the State of New York, and having its corporate situs in said State alone, but duly authorized under the laws of South Carolina to enter into contracts with the citizens of South Carolina and do business in said State.

(b.) That by the said answer of your petitioner, and in said fourth paragraph of said answer, your petitioner pleads and relies upon certain specific laws of the State of New York, and that said laws were in this case given and received in evidence, and constitute a part of the undisputed facts shown by the record in this case (Record, p. 8, fol. 23; p. 119, fol. 357; pp. 124–133, fols. 370–411), and a part of the contract between plaintiffs, respondents as stockholders and advanced members of defendant corporation, your petitioner, and your petitioner in its corporate capacity as a corporation of the State of New York.

(c.) That defendant, your petitioner, also introduced and gave in evidence as a part of the laws of the State of New York,
194 binding upon plaintiffs, respondents, as stockholders in and members of your petitioner in its corporate capacity, certain decisions and judgments of the courts of the State of New York, to wit, the opinions of the courts of the State of New York in the case of O'Malley *v.* People's Building and Loan Association, 92 Hun., 572; the case of Englehart *v.* Fifth Ward Loan Association, 148 N. Y., 281; the case of The People of the State of New York *v.* Lowe and others, 117 N. Y., 175; the case of Concordia Savings, &c., Association *v.* Reed, 93 N. Y., 474 (Record, p. 118, fol. 354; p. 120, fols. 358, 359; p. 138, fol. 412; p. 145, fol. 433; p. 145, fols. 434, 435; pp. 146–159, fols. 436–476; pp. 159–164, fols. 476–490), and your petitioner respectfully submits that all of said cases are a part of the law of the State of New York, binding upon plaintiffs, respondents, as members of and stockholders in defendant corporation, who are subject as such to the laws of the State of New York, and the decisions of the courts of said State construing the same (Record, pp. 174–177, fols. 522–525, 530–531).

(d.) That plaintiffs, respondents, gave and introduced in evidence the articles of incorporation of your petitioner, showing the incorporation of your petitioner under the laws of New York in 1890,

and also gave and introduced in evidence the by-laws of defendant,
your petitioner, adopted by it and in force in the year 1890
195 (Record, p. 12, fol. 35; pp. 36–49, fols. 106–147; pp. 50–66,
fols. 140–196), and that said articles of association and by-laws, together with the applications for stock in defendant association made by plaintiffs, respondents, the applications for advances or loans made by them, the certificates of stock in defendant corporation issued to them, and the mortgage executed by them to defendant corporation, when construed together, constitute the contract between plaintiffs, respondents, and defendant corporation, your petitioner, and show and establish that said contract and the relations and status of plaintiffs, respondents, to your petitioner were established and exist by and under the laws of the State of New York, and not otherwise, and must be determined under those laws (Record, pp. 84–85, fols. 251–255; pp. 86–90, fols. 256–268; pp. 90–91, fols. 270–273; pp. 66–70, fols. 196–209).

V.

That it appears from the record in this case that plaintiffs, respondents, became stockholders in, members of and "advanced" or borrowing members in and of defendant corporation prior to the enactment of sections 1894 and 1895 of the Revised Statutes of South Carolina of 1893, and that said sections of said statutes were enacted and came into force and effect long after the relations of plaintiffs, respondents, with defendant, appellant, as corporation and stockholders had been established; long after the contract or contracts
aforesaid between plaintiffs, respondents, and defendant corpo-
196 ration, and long after the execution, as a part of said contract or
contracts and as an incident thereof, of the mortgage given in evidence and relied upon by the plaintiffs, respondents, it appearing from the records that said mortgage was executed on the 1st day of May, in the year of our Lord one thousand eight hundred and ninety-one (Record, p. 66, fol. 196).

VI.

That by the decision and judgment of the court below in this case, and by the opinion and decision heretofore rendered and given in this court in this case, the obligation of the contract between plaintiffs, respondents and defendant corporation has been impaired, in contravention of section 1, article 10 of the Constitution of the United States, and that said judgments, decisions and opinions and said sections 1894 and 1895 of the Revised Statutes of South Carolina of 1893 are laws impairing the obligation of the contract between your petitioner, defendant corporation, and the plaintiffs, respondents, and are, therefore, in violation and contravention of the Constitution of the United States.

VII.

That the opinion and judgment of the court below, as affirmed by this court, and the decision and opinion of this court rendered

in this case are in violation and contravention of the Constitution of the United States, in this, that they deny full faith and credit "to the public acts, records and judicial proceedings" of the State of
197 New York, notwithstanding the fact that such public acts, records and judicial proceedings of the State of New York are binding upon plaintiffs, respondents as members of and stockholders in defendant corporation, your petitioner.

VIII.

That the decision and judgment of the court below in this case, as affirmed by this honorable court, and the opinion and decision of this court affirming the same, are in violation and contravention of section 1 of article XIV of the amendments to the Constitution of the United States in this, that said judgment, decision of affirmance and opinion have the effect of depriving and do in fact deprive your petitioner, defendant corporation, of its property without due process of law, and have the effect of denying and do deny to your petitioner, "a person" within the jurisdiction of this court, "the equal protection of the laws."

IX.

That no other distinct or different question than that arising out of the relations between plaintiffs, respondents, and defendant corporation, your petitioner, and out of the contracts aforesaid between them is involved or determined in this case, or by the judgment therein in the court below, as affirmed in this case, or by the opinion of this honorable court heretofore rendered herein.

X.

That the rights of defendant corporation, your petitioner,
198 under the Constitution of the United States and the fourteenth amendment thereto, are fully shown and arise by necessary intendment and implication upon the pleadings in this case, and particularly under the allegations of the fourth paragraph of defendant's answer herein, as aforesaid, and that the decision and judgment of affirmance herein is in denial of the rights claimed.

XI.

That by said answer, and under and upon the evidence aforesaid given in this cause, and constituting a part of the record herein, defendant corporation, your petitioner, claims, sets up and relies upon the rights, privileges and immunities guaranteed to it as a domestic corporation and artificial person organized under the laws of the State of New York by the Constitution of the United States.

XII.

That by the judgment of the court below in this case, affirmed in this honorable court, and by the opinion of this court rendered herein, the constitutional rights, privileges and immunities claimed

and relied upon by defendant corporation, your petitioner, are denied to your petitioner; it is deprived of its property without due process of law; it is denied the equal protection of the laws of this State, and the obligation of the contract between plaintiffs, respondents, and defendant corporation, your petitioner, is impaired, and said contract in effect vacated, annulled and for naught held, so as to wholly deprive your petitioner of all the rights and claims
199 held by it against plaintiffs, respondents, under and pursuant to the articles of association and incorporation of your petitioner as aforesaid, the mortgage indenture aforesaid, the by-laws of your petitioner aforesaid, and the other contract rights, claims and privileges of your petitioner as against the plaintiffs, respondents, under the contract or contracts aforesaid between your petitioner and plaintiffs, respondents.

XIII.

That it appears from the judgment of the court below, as affirmed by this honorable court, and from the opinion of this court herein—

(*a.*) That the judgment is for a penalty under a statute passed subsequently to the contract of plaintiffs, respondents, as stockholders with the defendant corporation, and to the execution of the mortgage by the plaintiffs, respondents, as stockholders and as "advanced" members of defendant corporation, becoming such under their contract of membership aforesaid.

(*b.*) That if the mortgage aforesaid is not discharged by payment, then sections 1894 and 1895 of the Revised Statutes of South Carolina have no application, and the penalty cannot be inflicted upon your petitioner.

(*c.*) That if the defendant's construction of the mortgage and of the contract of plaintiffs, respondents, as stockholders in defendant corporation is the correct construction, then the statute does not apply, and the penalty cannot be inflicted.

200 (*d.*) That from these premises it appears that the decision and opinion of this honorable court, therefore, necessarily turns upon the construction of the mortgage and of the plaintiffs, respondents' contract as stockholders with the defendant corporation.

(*e.*) That from this it necessarily follows that if the construction of the contract and mortgage by this honorable court, as set forth and stated in its opinion herein, is erroneous, and if the construction thereof for which defendant contends is correct, then the application of said sections of the Revised Statutes of South Carolina of 1893 impairs the obligation of said contract between plaintiffs, respondents as stockholders and defendant corporation, your petitioner, when the same is correctly construed, and the infliction of the penalty under said statute also impairs said contract, because the penalty imposed by said statute is not a burden within the purview of the contract itself at the time of its execution between the parties, and at the time when plaintiffs, respondents became stockholders in and advanced members of defendant corporation, your petitioner.

XIV.

That it appears from the opinion rendered by this honorable court herein that the contract existing upon all the pleadings aforesaid between defendant corporation, your petitioner, and plaintiffs, respondents, has been erroneously construed by this honor-
201 able court, in violation of the Constitution of the United States and of the constitutional rights of your petitioner, so as to invalidate, avoid, discharge, and annul said contract, release and discharge the mortgage executed by plaintiffs, respondents to your petitioner, and relieve and discharge plaintiffs, respondents from their contractual obligations as stockholders with your petitioner; and so as to inflict a penalty upon your petitioner in violation of the Constitution of the United States.

XV.

That the construction which this honorable court, by its decision in this case, gives to sections 1894 and 1895 of the Revised Statutes of South Carolina of 1893, impairs the obligation of the contract between plaintiffs, respondents and this defendant, your petitioner, and deprives your petitioner of its property without due process of law, and deprives your petitioner of the equal protection of the laws, and that said statute, as construed by the decision of this honorable court in this case, and the decision, opinion, and judgment of the court herein, are laws impairing the obligation of contracts, to the injury of your petitioner, and have the effect of depriving your petitioner of its property without due process of law.

XVI.

Wherefore, defendant corporation, your petitioner, respectfully submits that the judgment of affirmance rendered or about to be rendered and entered by this honorable court in this case is erro-
202 neous, and that the opinion of this honorable court in this case is erroneous and in contravention of the Constitution of the United States, and is in itself a law in impairment of the obligation of the contract between your petitioner and plaintiffs, respondents and in violation and contravention of the Constitution of the United States and of the fourteenth amendment thereto.

XVII.

For all of which reasons and causes, as hereinbefore assigned and set forth, your petitioner most humbly and respectfully prays that its motion for a rehearing and a reargument of this cause be granted; that the judgment of affirmance herein be set aside, and that upon a rehearing of this case the judgment of the court below be reversed and judgment rendered for defendant corporation, your petitioner.

All of which is most respectfully submitted.

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N, Y.,
Defendant, Petitioner,
By WM. HEPBURN RUSSELL,
WM. BEVERLY WINSLOW,
CHESTER M. ELLIOTT,
T. H. SPAIN, *Its Attorneys.*

203 The Eastern Building and Loan Association of Syracuse, N. Y., hereby consents that the recall of the remittitur and the stay thereof shall be granted upon condition that the status of the property involved in this case shall not be disturbed until after the final determination of the case.

EASTERN BUILDING & LOAN ASSOCIATION OF SYRACUSE, N. Y.,
[SEAL.] By C. A. POOLER, *Sec'l'y & Gen'l Manager.*

I hereby certify that I am not concerned in this action and that there is merit in the grounds presented in this petition for rehearing.

U. X. GUNTER, JR.

It being conceded that the remittitur has been sent down to the circuit court, it has been frequently held that this court has thereby lost jurisdiction of the case; and for that reason we have no authority to consider the questions presented by this petition, and hence the petition must be dismissed. We may add, however, that even if we had jurisdiction to consider and determine these questions we do not think that there would be any ground for a rehearing.

It is therefore ordered that this petition be dismissed 10 January, 1900.

HENRY McIVER, *C. J.*
Y. J. POPE, *A. J.*
IRA B. JONES, *A. J.*

Supreme court of South Carolina. Clerk's office, Columbia, S. C. Filed 10 Jan., 1900. U. R. Brooks, clerk.

204 I, U. R. Brooks, clerk of the supreme court of South Carolina, do hereby certify that the foregoing are true, full, and correct copies of the "case," judgment, remittitur, and opinion rendered by the court in the case of Lawrence S. Welling and Marion Bonnoit against Eastern Building and Loan Association of Syracuse, New York, def't, appellant, and five other plaintiffs, respondents, against said defendant, appellant; also true and correct copies of the petition filed for rehearing and order of court refusing the same; all of which are now on file in my office; and I do further certify that the opinion rendered by the court in said case and the petition filed for rehearing and order refusing the same are parts of the record in said case.

Given under my hand and the seal of the court, at Columbia, this 10 day of January, in the year of our Lord one thousand nine hundred, and in the 124th year of the Independence of the United States of America.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS, *Clerk.*

205 (*Original Citation.*)

UNITED STATES OF AMERICA, *ss:*

To Lawrence S. Welling and Marion Bonnoitt, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of South Carolina, wherein Eastern Building and Loan Association of Syracuse, New York, is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 18th day of January, in the year of our Lord one thousand nine hundred.

MELVILLE W. FULLER,
Chief Justice of the United States.

206 On this 24th day of January, in the year of our Lord one thousand nine hundred, personally appeared T. H. Spain before me, the subscriber, J. L. Michie, a notary public in and for the State of South Carolina, and makes oath that he delivered a true copy of the within citation to Lawrence S. Welling and also to Marion Bonnoitt, personally, at Darlington, South Carolina, on the 24th day of January, 1900.

T. H. SPAIN.

Sworn to and subscribed the 24th day of January, A. D. 1900.

[Seal of J. L. Michie, Notary Public, Darlington, S. C.]

J. L. MICHIE, *Not. Pub., S. C.*

We hereby acknowledge personal service of the within citation this 24th day of January, 1900.

LAWRENCE S. WELLING.
MARION BONNOITT.

Witness:
T. H. SPAIN.

207 (Internal-revenue stamp here.)

In the Supreme Court of the United States, October Term, 1899.

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y., Plaintiff in Error (Defendant Below),
against
LAWRENCE S. WELLING and MARION BONNOITT, Defendants in Error (Plaintiffs Below).

Bond.

Know all men by these presents that we, Eastern Building & Loan Association of Syracuse, N. Y., a domestic corporation of the State of New York, as principal, and The United States Fidelity and Guaranty Company, a body corporate of Baltimore, Md., as surety, are held and firmly bound unto Lawrence S. Welling and Marion Bonnoitt in the full and just sum of five thousand ($5,000) dollars, to be paid to the said Lawrence S. Welling and Marion Bonnoitt or their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves and our successors and assigns jointly by these presents.

Sealed with our seals and dated this 5th day of January, in the year of our Lord one thousand nine hundred.

Whereas lately, at a session of the supreme court for the State of South Carolina, in a suit pending in said court between said Lawrence S. Welling and Marion Bonnoitt, plaintiffs, respondents,
208 against said Eastern Building & Loan Association of Syracuse, N. Y., defendant, appellant, a final judgment was rendered against the said Eastern Building & Loan Association of Syracuse, N. Y., and the said Eastern Building & Loan Association of Syracuse, N. Y., having obtained the allowance of a writ of error, and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Lawrence S. Welling and Marion Bonnoitt, citing and admonishing them to be and appear at the Supreme Court of the United States, at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said Eastern Building & Loan Association of Syracuse, N. Y., shall prosecute said writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and effect.

[Eastern Co. Seal.]

EASTERN BUILDING & LOAN ASSOCIATION OF SYRACUSE, N. Y.,
By JOHN L. KING, *President.*

Attest: C. A. POOLER, *Secretary.*

[Fidelity Co. Seal.]

THE UNITED STATES FIDELITY & GUARANTY CO. OF BALTIMORE, MD.,
By GEO. F. McKEOUGH, *Attorney-in-fact.*

Approved to operate as a supersedeas.

(Signed) MELVILLE W. FULLER,
Chief Justice of the United States.

209 Statement of the United States Fidelity and Guaranty Company, rendered to the Department of Justice, Washington, D. C., at the close of business, September 30th, 1899; commenced business August 1st, 1896.

Assets.

Investments, stocks & bonds (market value)	$1,095,955.08
Collateral loans	444,056.25
Real estate	63,602.56
Cash on hand and in banks	317,164.88
Loans secured by mortgages	40,525.64
Advances on real estate secured by deeds	27,616.38
Furniture and fixtures	100.00
Agents' balances, less commissions	115,335.72
Mercantile and attorneys' subscriptions in course of collection	16,917.77
Interest, due and accrued	12,613.66
	$2,133,887.94

Liabilities.

Capital stock paid in cash	$1,500,000.00
Cash on deposit, held as security for risks	52,145.31
Surplus and reinsurance reserve	581,742.63
	$2,133,887.94

[Corporate Seal of the U. S. Fidelity and Guaranty Company.]

GEO. R. CALLIS, *Secretary.*

STATE OF MARYLAND, } ss:
City of Baltimore, }

On this 23 day of Nov., A. D. 1899, before me, the undersigned, a notary public in and for the city and State aforesaid, appeared
210 George R. Callis, secretary of the United States Fidelity and Guaranty Company, who, being by me duly sworn, did depose and say that he is an officer of said company, and that the above and foregoing is a true and correct statement of the assets and liabilities of said company as they appear upon the books of the said company.

——.

Subscribed and sworn to before me the day and year aforesaid.

ARTHUR C. PIERCE,
Notary Public.

[NOTARIAL SEAL.]

211 CITY OF SYRACUSE, } ss:
County of Onondaga, State of New York, }

On this 4th day of January, 1900, before me personally appeared Geo. F. McKeough, attorney-in-fact of the United States Fidelity and Guaranty Company, a corporation created and existing under and by virtue of the laws of the State of Maryland and duly authorized to transact business in the State of New York, with whom I am personally acquainted, who, being by me duly sworn, said that he resided in the city of Syracuse, N. Y.; that he is the attorney-in-fact of the United States Fidelity and Guaranty Company; that he knew the corporate seal of said company; that the seal affixed to the annexed instrument is such corporate seal; that it was affixed thereto by order of the board of directors of said company, and that he signed said instrument as attorney-in-fact of said company by like authority; and the said Thos. O'Donnell further said that he is acquainted with said Geo. F. McKeough and knew him to be the attorney-in-fact of said company, and that the signature of the said Geo. F. McKeough subscribed to the said instrument is the genuine handwriting of the said Geo. F. McKeough and was thereto subscribed by the like order of the said board of directors and in the presence of him, the said Thomas O'Donnell.

THOMAS O'DONNELL, [NOTARIAL SEAL.]
Notary Public.

At a meeting of the board of directors of the United States Fidelity and Guaranty Company held at the office of the company in the city of Baltimore, State of Maryland, on the 19th day of January, A. D. 1899, at which was present a quorum of said directors duly authorized to act in the premises, on motion it was unanimously—

Resolved, That in pursuance of section 811 of the Code of Civil Procedure of the State of New York James K. McGuire, Geo. F. McKeough, and Thomas Hogan, the attorneys-in-fact of the United States Fidelity and Guaranty Company for the county of On-
212 ondaga, in the State of New York, be, and each of them is hereby, authorized and empowered to sign, execute, and deliver any and all bonds or undertakings for and on behalf of this company and to attach thereto the seal of the company, the same to be attested by either one of the said attorneys-in-fact above named as occasion may require.

CITY OF BALTIMORE, } ss:
County of ——, State of Maryland, }

I, Geo. R. Callis, secretary of the United States Fidelity and Guaranty Company, have compared the foregoing resolution with the original thereof, as recorded in the minute book of the said company, and do hereby certify that the same is a true and correct transcript therefrom and of the whole of said original resolution.

Given under my hand and the seal of the company, at Baltimore, Md., this 27th day of November, 1899.

[Corporate Seal of the U. S. Fidelity & Guaranty Company.]

GEO. R. CALLIS, *Secretary.*

213 STATE OF NEW YORK, } ss:
County of New York, }

On this 4th day of January, 1900, before me, a notary public in and for the aforesaid county, personally appeared John L. King, to me known and known to me to be the person who executed the foregoing instrument on the part of Eastern Building and Loan Association, and who acknowledged that he executed the same.

[SEAL.] JULIA AKERS,
Notary Public, New York County, N. Y.

STATE OF NEW YORK, }
County of Onondaga. }

On this 4th day of January, 1900, before me, a notary public in and for the aforesaid county, personally appeared Geo. F. McKeough, to me known and known to me to be the person described in and who executed the foregoing instrument on the part of the United States Fidelity and Guaranty Company, and who acknowledged that he executed the same.

THOMAS O'DONNELL, [NOTARIAL SEAL.]
Notary Public.

214 [Endorsed:] (Copy of bond.) Eastern Building & Loan Association of Syracuse, N. Y., to —— ——. Russell & Winslow, office copy, 13. Eastern Building and Loan Association of Syracuse, N. Y.

215 (To be attached to and sent up with certified record by clerk of supreme court of South Carolina. R. & W.)

In the Supreme Court of the United States, October Term, 1899.

EASTERN BUILDING & LOAN ASSOCIATION OF SYRACUSE, N. Y., Plaintiff in Error (Defendant Below),
against
LAWRENCE S. WELLING and MARION BONNOITT, Defendants in Error (Plaintiffs Below).

Assignment of Errors.

Comes now The Eastern Building & Loan Association of Syracuse, New York, plaintiff in error, by its counsel, and respectfully represents that it feels itself aggrieved by the proceedings and judgment of the supreme court of South Carolina in the above-entitled cause and assigns error thereto as follows:

1. The supreme court of South Carolina erred in refusing to give full faith and credit to the public acts, records, and judicial decisions of the State of New York plead and given in evidence by the plaintiff in error and in denying the rule of constitutional obligation established by section 1 of article LV of the Constitution of the

United States and section 905 of the Revised Statutes of the United States.

2. The supreme court of South Carolina erred in its construction of the contract obligations between plaintiff in error and defendants in error, in this: that by its refusal to consider and pass upon the contract obligations of defendants in error to plaintiff in error entered into in the State of New York under the laws of that
216 State it impaired the obligation of a contract between the parties, refused full faith and credit to the public acts, records, and judicial proceedings of the State of New York, and deprived defendant of its property without due process of law.

3. The supreme court of South Carolina erred in the application to the plaintiff in error (defendant below) of sections 1894 and 1895 of the Revised Statutes of South Carolina of 1893, and erred in changing the settled construction of said statutory provisions, whereby it impaired the obligation of the contract between defendants in error and the plaintiff in error, denied the plaintiff in error the equal protection of the laws of South Carolina and deprived it of its property without due process of law.

4. The supreme court of South Carolina erred in holding that the laws of New York were not binding upon the courts of South Carolina and did not enter into, govern, and control the construction of the mortgage executed by defendants in error to plaintiff in error, so far as the obligations of defendants in error as members of and stockholders in plaintiff in error are concerned, and by such holding and decision the court erred in refusing full faith and credit to the public acts, records, and judicial proceedings of the State of New York and impaired the obligation of the contract between defendants in error and plaintiff in error.

5. The supreme court of South Carolina erred in holding that the mortgage executed by defendants in error to plaintiff in error was discharged and paid, and that the plaintiff in error was subject to the penalty provided by sections 1894 and 1895 of the Revised
217 Statutes of South Carolina of 1893, because such holdings and decision rest solely upon the refusal of said court to give full faith and credit to the public acts, records, and judicial proceedings of the State of New York, and have the effect of changing the settled construction of said statutory provisions so as to impair the obligation of the contract between the defendants in error and the plaintiff in error, and apply such statutory provisions to a mortgage not discharged or paid, and to a case not contemplated by the words of the statute and not within the scope and meaning of the prior decisions of the supreme court of South Carolina, interpreting and applying said statutory provisions.

6. The supreme court of South Carolina erred in changing the settled construction of sections 1894 and 1895 of the Revised Statutes of South Carolina of 1893, and in applying them to a case where the payment and discharge of a mortgage was controverted and denied by the mortgagee, and in which the mortgage itself was only an element or incident to the contract obligations existing between the defendants in error and the plaintiff in error, such con-

tract obligations arising under and being controlled by the public acts, laws, and judicial decisions of the State of New York.

7. The supreme court of South Carolina erred in refusing to give full faith and credit to the public acts, records, and judicial proceedings of the State of New York and to the contract entered into between plaintiff in error and defendant in error in the State of New York and under and pursuant to the laws thereof, and by its decision, opinion, and judgment in said case the supreme court
218 of South Carolina, in contravention of the Constitution of the United States, impairs the obligation of the contract between plaintiff in error and defendants in error, and said decision, opinion, and judgment of the supreme court of South Carolina are erroneous in this, that they establish a rule of law impairing the obligation of contracts and depriving plaintiff in error of its property without due process of law.

8. The supreme court of South Carolina erred in holding and deciding that "whatever may be the laws of New York, we do not think they should be enforced in this State."

Wherefore the said Eastern Building and Loan Association, plaintiff in error, prays this honorable court to examine and correct the errors assigned and for a reversal of the judgment of the supreme court of South Carolina entered in the said case of Lawrence S. Welling and Marion Bonnoitt, plaintiffs, respondents, against Eastern Building and Loan Association of Syracuse, N. Y., defendant, appellant, as aforesaid.

EASTERN BUILDING & LOAN ASSOCIATION OF SYRACUSE, N. Y.,
Plaintiff in Error,

By WM. HEPBURN RUSSELL,
WM. BEVERLY WINSLOW,
Its Attorneys.

CHESTER M. ELLIOTT,
T. H. SPAIN,
RUSSELL & WINSLOW, *Of Counsel.*

[Endorsed:] Supreme court of South Carolina. Clerk's office, Columbia, S. C. Filed 23 Jan., 1900. U. R. Brooks, clerk.

219 (*Original Writ.*)

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the supreme court of the State of South Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between

Eastern Building and Loan Association of Syracuse, New York, appellant, and Lawrence S. Welling and Marion Bonnoitt, respondents, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the
220 construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said appellant, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 18th day of January, in the year of our Lord one thousand nine hundred.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
MELVILLE W. FULLER,
Chief Justice of the United States.

221 I, U. R. Brooks, clerk of the supreme court of South Carolina, do hereby certify this to be a true, full, and complete copy of the record of the case of Lawrence S. Welling and Marion Bonnoitt, plaintiffs, respondents, against Eastern Building & Loan Association of Syracuse, New York, defendant, appellant, which is now on file in my office; and I do further certify that the opinion rendered by the court in said case, petition for rehearing, & order dismissing same are parts of the record of said case.

I do further certify that the original writ of error granted by Chief Justice Fuller, of the U. S. Supreme Court, on the 18th day of January, 1900, a copy of which is now on file in my office, and the assignment of errors thereon, and the original citation & a copy of the supersedeas bond, the original being now on file in my office, are hereunto attached.

Given under my hand and the seal of the supreme court of South

Carolina, at Columbia, this 26 day of January, in the year of our Lord one thousand nine hundred and in the 124th year of the Independence of the United States of America.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS, *Clerk.*

Endorsed on cover: File No., 17,620. South Carolina supreme court. Term No., 190. Eastern Building & Loan Association of Syracuse, N. Y., plaintiff in error, *vs.* Lawrence S. Welling & Marion Bonnoitt. Filed January 27th, 1900.